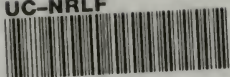
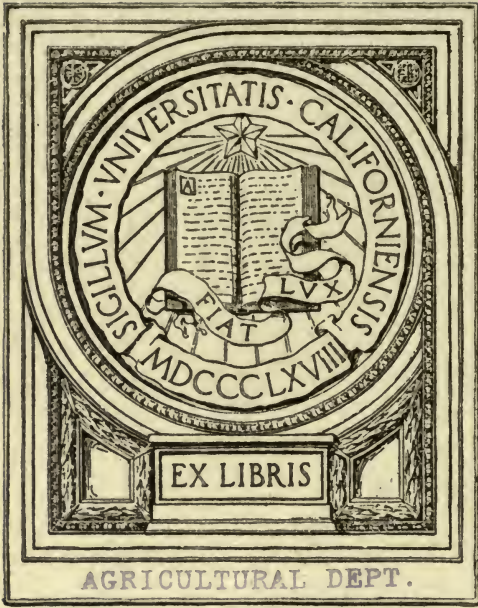


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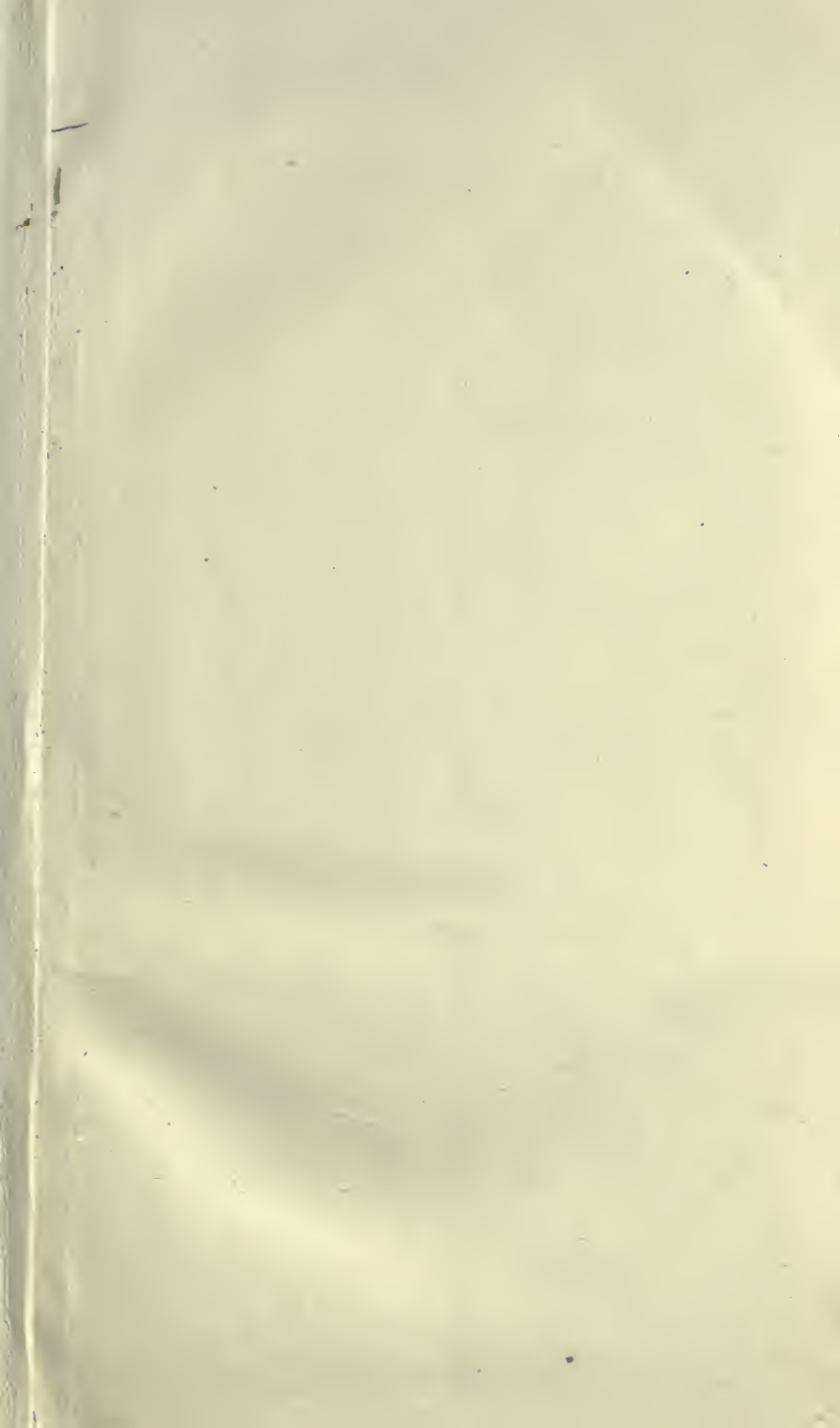
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ADDRESS

OF THE

STATE IRRIGATION COMMITTEE

TO THE

Fresno and Riverside Irrigation Conventions

AND TO THE

ANTI-RIPARIAN VOTERS

OF CALIFORNIA.

WITH OPINIONS OF THE PRESS.

1886.

California State Irrigation Commission
San Francisco, 1886.

ADDRESS

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STATE IRRIGATION COMMITTEE

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ADDRESS

TO THE

Members of the Riverside and Fresno Irrigation Conventions.

The undersigned, Executive Committee of the State Irrigation Convention, desire to submit a statement of their action to the constituents of the above Conventions, and to all people who have an interest in the encouragement of irrigation.

This committee was directed to frame bills for laws to be acted on by the Legislature. These were to remedy the evils of existing laws relating to the appropriation of water, and were intended to place irrigation amongst the permanent policies of the State. To the support of these proposed legal reforms we sought to bring an intelligent public opinion, fully aroused to the importance of this question of questions. The English common law doctrine of riparian ownership is repugnant and inapplicable to the physical conditions of this State, because it permits no use of water outside the banks of a stream, unless by assent of the abutting owner. As the waters are in volume far beyond the possibility of use by him for any purpose, this doctrine permits him to misrule them to waste in the sea, while lands lie virgin which they would rouse to such fruitfulness that a less acreage than elsewhere in the whole world would support a family in affluence without extreme toil.

The bills drawn by this committee were introduced in both branches of the Legislature, and underwent refinement and revision in the committees of that body.

Meantime the intelligent press of the State, alive to the justice of our cause, appreciating the necessity of legislation to put statute and natural law in harmony, came to our assistance. The leading journals of San Francisco realizing that the highest interests of that city impinge upon irrigation, made reiterated appeals to the Legislature in our favor, while the newspapers of the interior, with inconsiderable exceptions, aligned with us and gave gallant battle for our propositions.

These united efforts in a great and just cause disclosed to the Legislature and the people its relation to the prosperity of the whole State, and our reform was proved to be of general utility and application, and not a local issue exhausting its benefits in a pent up section. Confidence in the merit and necessity of our projected legislation was diffused throughout the State, and was reflected in memorials and petitions to the Legislature.

Our thanks are due and are hereby delivered in the name of those who represent to the press of the State for the service so generously volunteered and so efficiently rendered. It brought us near to success. The same assistance encourages a renewal of our efforts, with greater energy and the benefit of experience. Preparation for the future is not complete without the guidance afforded by the full history of what has been done. We addressed the Legislature with a review of our case, illuminated by extracts from the press. The sixty days session was drawing to a close. The few riparian owners who oppose the use of water for irrigation, controlling a small minority in the House, filibustered to hinder there the passage of our bills, but, when the sinister arts of delay had exhausted themselves, our measures passed the House by more than a three-fourths vote, and were sent to the Senate. There we had a two-thirds vote ready to be cast in our favor if the measures could be reached. The influence of the Governor's views so clearly expressed in our favor, and argued with unanswerable force in his mes-

sage, had been continually at work upon the better judgment of the Upper House. But there again filibustering and all the resources of Parliamentary impediment were against us, and the bills failed.

The mistaken men, who were the agents of this misfortune to California, should be marked, and future confidence be withheld from them when they ask the votes of irrigators to elevate them to office. Let them resort to the riparianists for support. Let them depend for future preferment upon the men who devote our lands to barrenness and threaten our State with decay. Let them, at least until our rights are entrenched in the harmonies of law, human and divine, suffer the consequences of their malice or their mistake.

Here ends the history of what has been done. Here the account of our stewardship is rendered.

Now we turn to the future. We appeal from a filibustering minority of the Senate to the great people whose wishes are soon to be reflected in the election of a new Legislature. We would have them realize the necessity of irrigation. The benefits it has already showered upon the State are inestimable, and the blessings yet to come from the water are innumerable.

Great areas are already made fruitful, and enterprising thousands under the protection of the doctrine of appropriation produce a generous livelihood for themselves and a great surplus for export, which adds to the common wealth. Millions of dollars are invested in canals and ditches primarily devoted to irrigation, while the systems which were built for hydraulic mining debouch upon plains that are athirst, and used for irrigation will create greater wealth than gilded the dreams of their projectors.

But the acreage already subjected to irrigation is insignificant compared with the desert unreclaimed. Within the rim of our great interior valleys there are 64,000,000 acres, an area equal to that of Maine, New Hampshire,

Vermont, Massachusetts, Rhode Island, Connecticut, New York and Pennsylvania combined. Yet those States have a population of 13,427,270! A population which supports the three imperial trade centres of the country—Boston, New York and Philadelphia, besides scores of local points for the concentration and distribution of the immense commerce generated in the necessities and the energies of those millions of people. Going abroad for comparison, this habitable area in California, naturally tributary to San Francisco, is one and a fourth times the size of Great Britain, with her 30,000,000 of people. Yet our valleys have only 284,000 souls, and our own whole area only $5\frac{1}{2}$ persons to the square mile! The whole Atlantic slope has 22.4 to the square mile; the Merrimac Valley has 92.6; the Connecticut Valley, 56.5; the Valley of the Hudson, 173; the basin of the St. Lawrence, 33; the Ontario basin, 78.2; that of Lake Erie, 89.6; the Valley of the Miami, 109.67; while the Valleys of the Sacramento and San Joaquin have only 4.9 to the square mile!

To continue the suggestive comparison: if our two great valleys were as densely peopled as the basin of the St. Lawrence, their population would be 1,856,000; if equal to the New England coast, they would have 3,538,000; if equal to the Ontario basin, 4,523,000; if equal to the Valley of the Delaware, 10,208,000. To sum up: The present unoccupied area of these valleys should support 11,000,000 of people, a population which would make San Francisco the most desirable business city in the world, and the mart of an immense commerce, as varied in the products which create it as the globe-gleaned trade of London.

These results can only be secured by irrigation. By its aid only can crops be raised at all in a large part of the area just described, because of the light rainfall and natural dryness of the climate in the desert half of the State. While irrigation is needed to make returns from the soil sure where a fickle rainfall now enables a full crop only one year in seven.

All of this area is capable of high farming. It will produce a commercial surplus of every necessity, luxury and delicacy listed in the food supply that grows outside the tropics. Noble mountains rise on either side of those valleys, clad with timber which shelters the cool sources of the waters for irrigation. The seashore is a short journey distant. Thermal springs pour out their medicinal waters near at hand, and here lies a richer soil than Belgium has, under kinder skies than Italy can boast. The thought is insufferable that uncongenial law shall permit human selfishness to forbid the bans between these gifts of God, and by keeping land and water wastefully apart deny the world the benefits and blessings of their union.

The streams which traverse these valleys have their heads in perpetual snow. Riparian ownership denies their flow to the thirsty earth and condemns it to evaporation and emission in the thankless sea.

What is the law, and what ought it to be? These are the questions to be settled. Shall the streams be legally open to appropriation, or shall the law of riparian ownership lock the water within the banks? Shall the flow be useful or useless? The intelligence and enterprise of the State have already answered these questions: "The water shall be for irrigation." This answer is only the reflection of the first impulse of our pioneers, who appropriated to useful purposes the waters they found wasting. This custom has been projected to the comprehensive systems that are now making parts of this wilderness to blossom, and there even women to-day guard the gates through which flow the very waters of life that support the vine and fig tree under which their children play.

The efforts of the last two years have recruited the ranks of irrigators, until we are an army. The force is ready now for organization, which should be made in all interested localities. Organization is power. We must now make our force effective in the politics of the State, since in politics

the Legislature to which we appeal, is generated. We must demonstrate the fact that there are political triumphs greater than the conquest of spoils, and this is to be done by going unitedly into politics to stay until our rights are secured. The counties vitally interested in irrigation cast upwards of 40,000 votes. They control elections, for narrow pluralities between parties are of late years the rule in California. In our First Congressional District in 1884, a plurality of 145 elected in a total vote of 33,103. In the Second District the winning plurality was 119 in a vote of 37,073. In the Sixth District it was 409, in a vote of 35,444. So let no irrigator despair that his vote counts so little. To get the full benefit of our strength, this committee advises that irrigation anti-riparian clubs be formed in every town and county throughout the State, to membership in which every one, no matter what his occupation, shall be eligible, provided he faithfully opposes riparian monopoly of water and favors appropriation for irrigation, and the measures referred by us to the last Legislature. These clubs should form at once. Never mind if a club be few in number. Its strength is its righteousness of purpose, and the aggregate membership when it keeps step all over the State will shake the foundation of parties, and these clubs can say who shall be Governor, Attorney-General and Judges of our Supreme and Superior Courts, and who shall sit in the Legislature. In addition to the construction of this club organization, in the further performance of our duty, we hereby call and appoint

A STATE CONVENTION

Composed of all who favor the platform and objects of the Fresno Convention of Irrigators, and support the measures proposed to the Legislature by this organization. This Convention will meet in San Francisco on Thursday, the 20th day of May, 1886, at 11 o'clock A. M. We urgently request every Club organized under this call to delegate as many as can come to take part in this Convention, and it is

distinctly understood that participation therein is not the right or privilege of supporters of riparian ownership.

When assembled the Convention will effect a permanent central organization, to perfect the scheme of laws already prepared by this Committee, and urge them to success in the next Legislature; also to formulate a plan of action to be followed in the coming political campaign, by which our strength shall be felt at every precinct in the State, and the value of our supporters demonstrated to every candidate for office. Through this organization it is proposed to inform both parties that we know no politics but irrigation, and that our battlefield is on the irrigable plains upon which the future of California is to be exploited.

J. DE BARTH SHORB,
 W. S. GREEN,
 H. S. DIXON,
 E. H. TUCKER,
 L. M. HOLT,

J. F. WHARTON,
 R. HUDNUT,
 L. B. RUGGLES,
 D. K. ZUMWALT,
 Executive Committee.

ARTICLES OF ASSOCIATION

OF THE

ANTI-RIPARIAN IRRIGATION CLUB.

WHEREAS, The necessities of the people of this State, growing out of our peculiar climatic and physical conditions, require that all the waters of the State should be applied to beneficial uses, and especially to irrigation; and

WHEREAS, It has been the well-established custom and usage of the inhabitants of the State every since the territory was acquired from Mexico, and long prior thereto, to enjoy and permit the free appropriation and diversion of water to all who would apply it to a beneficial use; and

WHEREAS, By virtue of such usage and custom, capital and labor have created out of deserts and rivers enormous wealth to the State, and the irrigation interests have assumed gigantic proportions; and

WHEREAS, Several hundred thousand people are now dependent upon and directly or indirectly supported by means of irrigation; and

WHEREAS, Attempts are now being made to resurrect the English common law doctrine of riparian rights from the grave to which the will of the people long since consigned it, and to impress it upon the jurisprudence of the State; and

WHEREAS, Such attempt, if successful, means the desolation of thousands of homes; it means that the desert shall invade vineyard, orchard and field; that the grape shall parch upon the vine, the fruit wither on the tree, and the meadow be cursed with drought; it means that silence shall fall upon our busy colonies, and their people shall flee from the thirsty and unwatered lands; it means that the

cities built upon the commerce irrigation has created, shall decay, and that in all this region the pillars of civilization shall fall, and unprofitable flocks and herds shall graze the scant herbage where once there was a land of corn and wine, flowing with milk and honey; and

WHEREAS, If this attempt to forbid the useful appropriation of water is defeated by a righteous public opinion crystallized into law, the homes now planted in the midst of fruitful acres will remain the shelter of a happy people, enriched by the productive soil, and irrigation will advance the frontier of verdure and flowers and fruits, until the desert is conquered and has exchanged its hot sands for happy garlands, its vagrant herds for valiant people, and the bleak plains will grow purple with the vintage and golden with the harvest, and the pleasures and profits, the peace and plenty that come out of the useful rivers will make this land the Promised Land to millions of free people; and

WHEREAS, We have, then, on the one hand the certainties of agriculture and horticulture, of profitable immigration, of surplus production for export of articles universally desirable and necessary, and always in demand; the growth of our cities and the greatness of our State. On the other hand are thirst and famine, ruin and decay, farms dismantled, colonies abandoned, cities subjected to dry rot, and the State denied her career by denying to her people their birthright.

WHEREAS, The Court of highest resort of the State, whose final determination is conclusive of law, is divided upon the question, and the right of appropriation and irrigation now stands upon uncertain ground; and

WHEREAS, The Legislature has failed to take measures for the protection of irrigation; and

WHEREAS, There are 40,000 voters in this State ready and anxious to fight and vote as a unit for irrigation; and

WHEREAS, The safe and sure road to a successful issue, in the Courts and in the Legislature, is to organize, and by united and harmonious action control the result of the coming election—

Resolved, That we, the undersigned, associate ourselves together under the name of the Anti-Riparian Irrigation Club of _____ and adopt the following By-Laws and Pledge:

BY-LAWS AND PLEDGE.

ARTICLE I.

The purposes for which this Club is organized, are—

1. To maintain that the right of appropriation of water for beneficial purposes, is and always has been, paramount to any alleged rights of riparian owners in this State.

2. To secure the adoption of an amendment to the State Constitution, declaring that the common law of England is not and should not be the rule of property, or the rule of decision in the Courts of this State in controversies concerning the right to appropriate, divert and use water, nor in actions by or against actual appropriators of water for beneficial purposes; and that priority of appropriation for a beneficial purpose determines the right without regard to the ownership of the banks of a water-course.

3. To maintain both as a physical and legal proposition, that the conditions and necessities of the People of this State, and the climatic and physical characteristics of the State are, and ever have been, such as to render the common law doctrine of riparian rights inapplicable here.

4. To secure the passage of any and all other amendments to the Constitution or Laws which will contribute to establish the right of irrigation against the riparian doctrine.

5. To procure the election of members of the Legislature who openly and without qualification, favor and will act upon the foregoing principles, regardless of political affiliations.

6. To oppose through the ballot-box, and by every other legitimate means, the election of any person to office, execu-

tive, legislative or judicial, who is not known to be in full and active accord with every proposition contained in these By-Laws.

7. To obtain confirmation by the Courts and the Legislature as the law and the fact, that the use of the waters of streams for the purpose of irrigation, is a natural want in this State, and to be preferred to all other uses.

ARTICLE II.

No person who is not in full accord with the purpose and principles contained in Article I of these By-Laws, shall be qualified to become a member of this Club.

Every person becoming a member shall sign these By-Laws, and take and subscribe to the following pledge:

We, the undersigned, hereby pledge ourselves to use all honorable means to carry out the purposes of this Club, as set forth in the foregoing By-Laws; and we hereby declare that the principles therein set forth constitute the first article of our political creed, and that no candidate of any party for office shall receive our vote or our support, unless he is a pronounced believer and advocate of the principles therein enumerated.

ARTICLE III.

The officers of this Club shall be President, Vice-President, Secretary and Treasurer, and their duties shall be such as are usually performed by such officers.

TO THE

ANTI-RIPARIAN VOTERS OF CALIFORNIA.

Now is the time to organize for war against Riparianism. We recommend that you immediately form Anti-Riparian Irrigation Clubs, and adopt the accompanying Articles and By-Laws. In them you will find the Anti-Riparian Irrigation political creed.

Begin to enroll in Clubs at once. You are forty thousand strong. Unite as one man, speak with one voice, and vote with one accord.

By union you can command as a right what you have vainly begged as a favor.

Organize and you can have a potent voice in the selection of Judges and Legislators. It is within your power to crush the threatening evils of Riparianism. Fire the hearts of the people with the justice of your cause. Show political parties that you have the strength and the will to enforce what you demand.

J. DEBARTH SHORB,

W. S. GREEN,

H. S. DIXON,

E. H. TUCKER,

L. M. HOLT,

J. F. WHARTON,

R. HUDNUT,

L. B. RUGGLES,

D. K. ZUMWALT,

Legislative Committee of the
State Irrigation Convention.

TO THE PUBLIC.

The following is a list of the newspapers in the State which have espoused the cause of irrigation:

ALAMEDA COUNTY.

Alameda Encinal,
Alameda Semi-Weekly Argus,
Berkeley Advocate,
Brooklyn Eagle,
Haywards Journal,
Livermore Valley Review,
Oakland Enquirer,
Oakland Journal (German),
Oakland Sentinel,
Oakland Times,
Oakland Tribune,
Pleasanton Star,
San Leandro Reporter,
West Oakland Sentinel.

COLUSA COUNTY.

Colusa Sun,
Maxwell Star.

CONTRA COSTA.

(Martinez) Contra Costa Argus,
(Martinez) Contra Costa Gazette,
Martinez Daily Item.

FRESNO COUNTY.

Fresno Expositor,
Fresno Republican.

HUMBOLDT COUNTY.

(Eureka) Humboldt Standard.

INYO COUNTY.

(Independence) Inyo Independent.

KERN COUNTY.

(Bakersfield) Kern County Californian,
(Bakersfield) Kern County Gazette.

LOS ANGELES COUNTY.

Anaheim Gazette,
Los Angeles Express,
Los Angeles Herald,
Los Angeles Mirror,
Los Angeles Times,
(Sabado) La Cronica.
Santa Ana Standard,

MARIN COUNTY.

(San Rafael) Marin Co. Tocsin.

MARIPOSA COUNTY.

Mariposa Herald.

MENDOCINO COUNTY,

(Ukiah City) Dispatch-Democrat,

MERCED COUNTY.

Merced Express,
Merced Star,
(Merced) San Joaquin Valley Argus.

NAPA COUNTY.

Napa Daily Register.

NEVADA COUNTY.

Grass Valley Tidings,
Nevada Transcript.

PLACER COUNTY.

(Auburn) Placer Co. Republican.

SACRAMENTO COUNTY.

Galt Weekly Gazette,
Sacramento Record-Union,
Sacramento Sunday Capital,

SAN BERNARDINO COUNTY.

Colton Semi-Tropic,
Riverside Press and Horticulturist,
San Bernardino Times.

SAN DIEGO COUNTY.

(San Diego) Daily San Diegan,
San Diego Sun.

SAN FRANCISCO.

Alta,
Call,
Chronicle,
Examiner,
Pacific Rural Press,
Political Record,
Post,
Resources of California,
Spirit of the Times,
Weekly Star.

SAN JOAQUIN COUNTY.

Stockton Independent,
Stockton Herald,
Stockton Mail.

SAN LUIS OBISPO.

San Luis Obispo Tribune.

SANTA BARBARA COUNTY.

Santa Barbara Express,
Santa Barbara Press,
Santa Barbara Republican,
Santa Barbara Independent.

SANTA CLARA COUNTY.

Los Gatos Mail.
San Jose Republican.

SANTA CRUZ COUNTY.

Santa Cruz Sentinel.
Watsonville Pajaronian.

SIERRA COUNTY.

(Downieville) Mountain Messenger.

SOLANO COUNTY.

Dixon Tribune,
Vallejo Evening Chronicle,
(Vacaville) Judicion.

SONOMA COUNTY.

Petaluma Argus,
Petaluma Courier,
Santa Rosa Democrat.

STANISLAUS COUNTY.

Modesto Herald,
Modesto News,
Modesto Republican.

TEHAMA COUNTY.

(Red Bluff) Tehama Democrat.

TULARE COUNTY.

Traver Tidings,
Tulare Register,
Visalia Delta.

YUBA COUNTY.

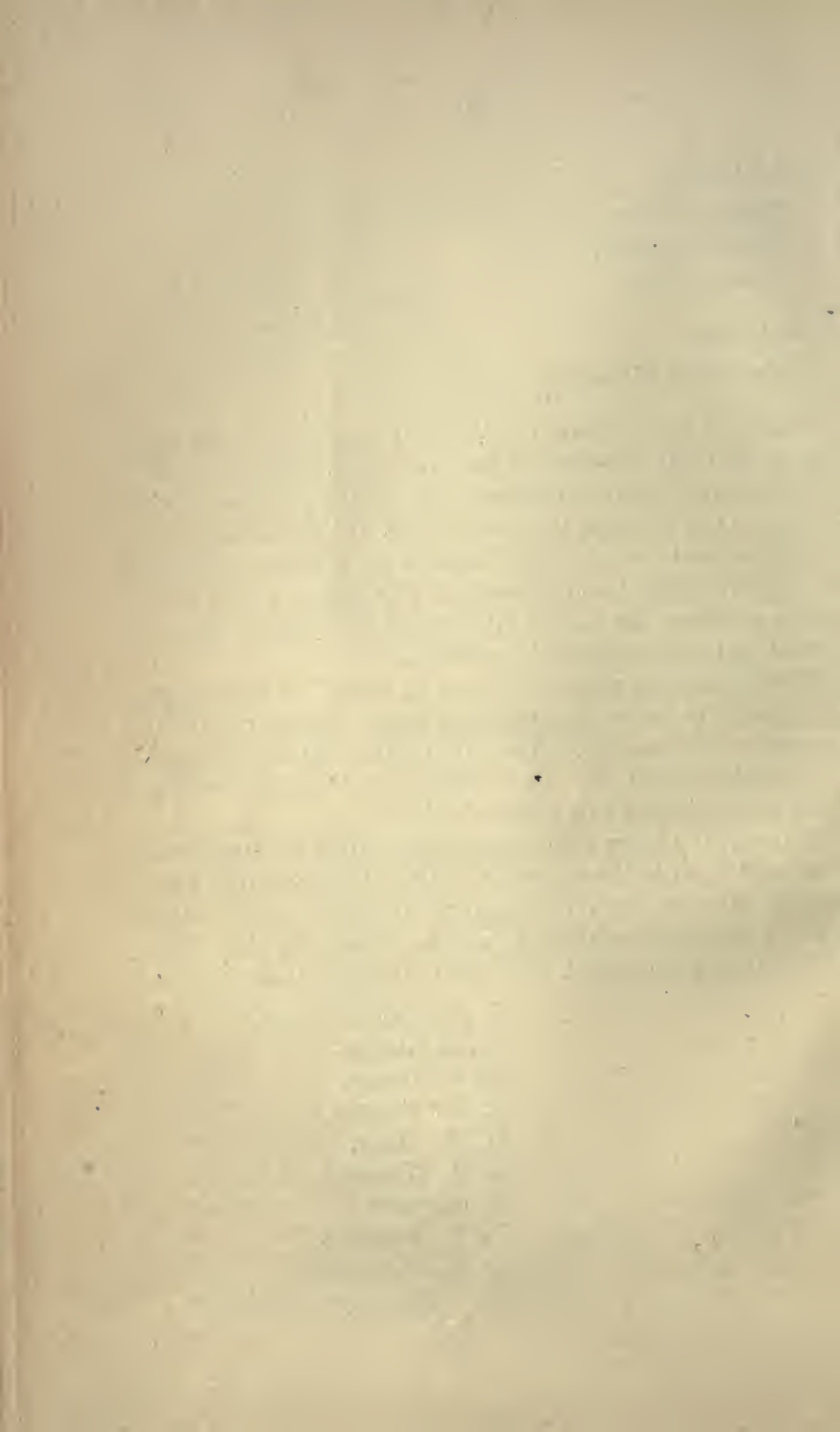
Marysville Democrat.

There are many others not included in this list for the reason that the Committee has not yet had access to all. For their united and valuable assistance the gratitude of all is due. Only through their timely aid, the gallant fight for irrigation made at the last Legislature became possible. By their intelligent and exhaustive elucidation of the irrigation question, the people all over the State have been educated and aroused to its importance.

The Committee, personally, and in behalf of all irrigators, desire to tender thanks to the Press, and urge the continuance of the work so efficiently begun. With its powerful re-enforcement, we are confident of carrying the fight against riparianism to a successful issue.

We reprint a large number of extracts from the press and commend them to the attention of all. A supplement containing extracts from newspapers, not yet received, and articles hereafter published, will be issued by this Committee during the session of the State Irrigation Convention.

J. DE BARTH SHORB, ✓
W. S. GREEN, ✓
H. S. DIXON,
E. H. TUCKER,
L. M. HOLT,
J. F. WHARTON,
R. HUDNUT,
L. B. RUGGLES,
D. K. ZUMWALT,
Executive Committee.



ADDRESS.

*To the Legislature of the State of California,
Convened at its Twenty-sixth Session.*

The undersigned constitute a Committee appointed by the State Irrigation Convention, held at Fresno, in December, 1884. ✓

Pursuant to the powers conferred upon us by that body, we address you in advocacy of several measures now before you relating to the subject of irrigation.

Our purpose is to present to you as briefly as possible, a few of the reasons which make immediate legislation upon the subject, of inestimable importance. Also, to convince you, if possible, that the bills mentioned are the best yet proposed, and will, if enacted, go far to restore order out of the existing chaotic condition of the State water law, by authorizing and regulating the use of water for irrigation.

IRRIGATION A NATURAL WANT.

It seems superfluous to restate or add to the facts already well known and often repeated, showing that irrigation is a natural necessity throughout a large portion of the State; it has never been denied that such is the case. The necessity has already been recognized and declared at previous sessions of the Legislature. The present State Engineer bears testimony to it. Many decisions of the courts have conceded the fact as one of which they will take judicial notice. The extensive irrigation works already constructed, and the annual expenditures of vast amounts of money upon irrigation, places it beyond controversy. ✓

Our own testimony and that of the people in whose behalf we address you, is at your command and to be corroborated by thousands in every part of the State.

BENEFITS OF IRRIGATION.

The product of the soil is the principal source of the wealth of the people. Artificial irrigation has made possible an enormous, almost an unlimited increase in the area of cultivated land. This has been, and will in the future, be accompanied by a corresponding enlargement of population. Each supplements the other. Great strides have been made already in many branches of industry to which irrigation is necessary. ✓

The production of fruit is constantly becoming greater. Grapes, raisins, wine and brandy are among the most important of our exports. Countless herds of cattle are fattened for home and foreign market from the yield of irrigated land. Sheep by thousands are grazed upon grasses artificially watered. Our wool production is growing rapidly. With water for his land the ✓

owner can choose at his will whatever he desires to cultivate. The possibilities of the soil are boundless. Land-owners are constantly increasing the value and variety of their productions by repeated experiments. The price of land increases at an incredible ratio with the introduction of water. The statistics of population, area of cultivated land, and productions of various kinds will show you the wonderful progress which Southern California has made with the gradual extension of irrigation. The reports of the railroad and steamship companies will convince you of the magnitude of its trade. The merchants of San Francisco can bear witness to the prominent position which it occupies with relation to the commerce of that city. The residents of that section will testify that whatever success they have attained and whatever prosperity the future has in store for them, can be ascribed to irrigation.

Without attempting, accurately, to state the acreage now irrigated, nor the money invested in irrigation works, it is sufficient for our present purpose to remind you that at a moderate estimate there are now many hundred thousand acres of irrigated land, and ditches and canals many thousand miles in length, constructed and maintained at a cost of not less than \$100,000,000.

The works already constructed will furnish means of irrigation for double the amount of land now irrigated. The water of our rivers, economically distributed, will suffice to extend irrigation to millions of acres yet untouched.

By the construction of reservoirs in the mountains, the water supply can be indefinitely increased, and large quantities utilized, now yearly wasted during the winter and spring freshets; but this can only be accomplished by State means, or through the co-operation of large capital, and must await the gradual development of the country.

INJURIOUS CONSEQUENCES OF DENIAL OF RIGHT OF IRRIGATION.

Of all the land now under irrigation, that portion bordering upon river banks, the property of riparian owners, forms an insignificant fraction, and even that is irrigated by water claimed by actual appropriation and not by virtue of a riparian right. Compared with the area still to be irrigated, the area in riparian ownership is infinitesimal. The consequences of depriving all, or all but riparian owners, from irrigating are simply frightful to contemplate. Indeed, it is not easy to conceive them at once. The physical effects upon the face of the country can only be fully comprehended by those early settlers who saw a sand waste where he now beholds a prospering farm. Who can picture to himself the condition of the people when the day comes that tells them in the name of the law that they shall not take the water of the river for their dying crops? It takes but the commonest observation and the least reflection to perceive that the use of the *ripari*, for any practical purpose, is impossible upon our ordinary California stream. In England and in other wet countries the water is not used or needed for irrigation, and all the uses of the stream for mills and the like are upon the bank. The uses are such as that the water, if momentarily diverted, can be and is immediately turned back in full volume. There is no use of the water desirable or prac-

licable except upon the bank. Here the reverse is the rule. The most valuable and essential use of the water is to vivify the ground and stimulate production by irrigation. This cannot be done on the banks; it is not riparian, and the water when taken out and used is absorbed by the ground and cannot be returned. Every one familiar with our physical conditions, knows well that a river channel through any man's land is here, as a rule, but a washed-out sandy depression, bordered by a few trees and willows, and generally in the season when alone water is useful, only the dry, unsightly bed of a sunken stream, and even when the water flows in it, no ordinary small farmer, if owning land upon it, can take the water out on his own land unless he can first teach it to run up hill. He has to go above upon the land of some upper proprietor to divert it, in derogation of the so-called riparian rights below him, in order to get it out of the stream on to his own land. So far as watering cattle is concerned, there are few of the great stock men of the San Joaquin plains who do not rely upon wells for that purpose, and for the reason that the water of the streams in the hot summer weather becomes full of vegetable and animal matter, and often destroys the cattle in large numbers.

But even suppose the water can be used and is convenient for use to water stock. Suppose to take it away would be inconvenient to the man owning more or less cattle who owns the bank. Suppose, in short, that some one must suffer inconvenience and hardship, no matter which rule prevails. What then is to be done? Which is better? That a few men, the limited few who own the bank, should have the exclusive use of the stream to water their stock, all irrigation be stopped, all the progress of the past be blotted out, and ruin and destruction be brought to all the prosperous and happy homes of which now irrigation is the cause, the life and the only hope; or that the stream be used so as to irrigate the greatest amount of land which it is capable of irrigating, so as to stimulate production to its widest limits, so as to build up homes of plenty and happy firesides, and rich and prosperous communities and peoples, even if the stock men do have to sink a few wells to water their stock? Which is best—the desert, with a few herds and their scattering attendants, or green fields, orchards, the vine, the olive, the orange, the ripening grain and the happiness and prosperity which attends safe and certain husbandry?

CUSTOMS AND USAGES, IRRESPECTIVE OF LAW.

Whether authorized by law or not, it is a matter of common knowledge that, dating back prior to our conquest, the customs and usages of the inhabitants justified the diversion and use of water for agricultural and other purposes. Common consent and common necessity gradually gave form and life to the custom. The rule was adopted in settlement of disputes over water, between man and man, that he who was prior in time gained priority of right. Practically, the common law of riparian rights was unknown. It was not invoked between claimants of water, and fell into disuse. This was not alone the

case between individuals, but was universal everywhere. To the farmer wishing to irrigate it never occurred that he could not appropriate water at his pleasure. Not even the riparian owner claimed or insisted on rights except by actual appropriation. Neither he nor any other appropriator thought of insisting that the water of a stream should run confined to its natural course any more than that they would have expected it to run up stream.

This custom became, *unto laymen* at least, a rule of property, so that their contests over water were always, as to priority and quantity, regardless of the ownership or situation of land.

THE LAW.

By the Act of 1850 adopting the common law it is provided: "That the common law of England so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the Courts of this State." This provision was re-enacted in the Political Code.

This statute has been the subject of judicial construction in many cases, as have like provisions in the laws of other States. In some of the original States the substance of this law was held by the courts to be the rule of their decisions even when not made the written law. By the incorporation of this rule into the body of the statutes, it was the intention of the earlier lawgivers of the State to follow in the footsteps of the older States. It is therefore necessary to examine the decisions of the courts of other states to learn their construction of this statute, and upon comparison with the interpretation of it given by our own courts, to establish its effect upon the rule of decision which should govern cases involving water rights in this State.

It must be kept in mind at the same time, that the language of our statute is "the Common Law of *England*," and that it is claimed by the riparianists that according to that common law that—

"Every proprietor of lands on the bank of a stream, has an equal right to use the waters which flow in the stream, and consequently no proprietor can have the right to use the water to the prejudice of any other proprietor. Without the consent of the other proprietors, no proprietor can either diminish the quantity of water which would otherwise descend to the proprietors below or throw the water back upon the proprietors above."

And, that it is also claimed by the riparianists that by our statute every part and portion of that common law has been adopted, no matter how unsuited to our condition or repugnant to our customs and manners.

We quote from Sedgwick on the Construction of Statutory and Constitutional Law, a well-known work, accessible to all:

"The colonists who settled this country were Englishmen, with the feelings, the attachments and the prejudices of Englishmen. It became necessary for them to establish, or recognize and adhere to some system of law from the moment they landed. That system was English, and ac-

“ cordingly, we find the doctrine to have always been that the colonists were ‘ subject to, and, as it were, brought with them, the great principles of the ‘ common law of the mother country, with such modifications as the legis- ‘ lative enactments of Parliament had at that time introduced into it, or the ‘ *particular situation of the colonists in their new condition required.*”

“ The declaration of rights made by the first Continental Congress in 1774 ‘ declares that ‘ the respective colonies are entitled to the common law of ‘ England, and to the benefit of such English statutes as existed at the time ‘ of their colonization, and *which they have by experience found to be applicable ‘ to their social, local and other circumstances.*”

“ This is the uniform language of our judicial decisions, whether of ‘ Federal or State tribunals. It has been declared by the Supreme Court of ‘ the United States * * * that the common law of America is not to be ‘ taken in all respects to be that of England; but that the settlers brought ‘ with them and adopted only that portion which was applicable to their ‘ situation.”

Further on he says : “ It is very important to bear in mind the exception ‘ already mentioned, that only so much of the English common law was ‘ adopted by the colonies as was applicable to their condition.”

Sustaining his text, he cites cases by the United States Supreme Court, New York, Massachusetts and New Hampshire.

It will also be seen by quotations from the Constitutions of several States, cited by him on pages 10, 11 and 12, that the language adopting the common law is similar to our statute, and *while there is in them no express exemption of such portions of the common law as was inapplicable to the condition or situation of the particular community, yet such exemption has been assumed by the Courts.*

The adoption of this English common law by our legislative enactment simply adopted the common law system as distinguished from the civil law system which prevailed in this State under Spanish-American rule. The common law system was adopted here, as it was in New York, in Ohio, in Iowa, and in fact nearly all the States of the Union, but as in all the other States as here, that adoption did not include those portions thereof which are wholly inconsistent with our condition, habits, necessities, and institutions as a people.

It is contended by the riparianists that the Legislature, in adopting the common law of England, intended that, except as far as modified by express statute, it should be rigidly followed in every particular, however absurd, inconvenient, and repugnant to the conditions of life in California some of its principles might prove to be. It is claimed that the common law as adopted here is an inflexible, unyielding system of legal doctrines and rules, like the law of the Medes and Persians, “ which altereth not.”

You are asked to believe that in selecting this system as her code of “ un- written law,” California has, so to speak, deliberately encased her young and growing form in a cumbersome, ill-fitting suit of medieval armor, which is so riveted and joined together that nothing but legislation, and not even

that, can remove it. This theory attributes to the common law a rigidity and fixedness of character which it does not possess even in England. It is there a growing, changing system, accommodating itself, from age to age, to the necessities and convenience of the nation.

✓ Common law is but customary law, and a custom not in accordance with the needs of the people could not possibly be established.

Sedgwick says, at page 10: "But the common law is perpetually 'fluctuating.'" * * * "It was therefore necessary to fix a time after which any changes effected in the common law of the mother country would 'have no effect here.'"

At page 4, he says: "To this source (i. e., custom,) is also chiefly to be traced the great body of the original English law 'that ancient collection of 'unwritten maxims and customs called the COMMON LAW,' which still exercises such extensive sway in both England and America, and on which we 'daily see engrafted regulations owing their origin to the same principle.'"

Since the system possesses this plastic character in the land where it originated, it must continue to possess it where adopted here, whether adopted by express statute or by voluntary recognition of the courts as a part of our heritage as descendants of the English nation.

✓ It has been uniformly adjudged in this country that the common law, however adopted, is in force here *only so far as it is adapted to our situation, wants and institutions.*

✓ Says that great New York jurist, Judge Bronson: "I think no doctrine better settled than that such portions of the law of England as are not adapted to our own condition form no part of the law of this State. The exception includes not only such laws as are inconsistent with the spirit of our institutions, but such as were framed with special reference to the physical condition of a country differing widely from our own. It is contrary to the spirit of the common law to apply a rule founded on a particular reason to a case where that reason utterly fails. *Cessante ratione legis, cassat ipsa lex.*"

20 Wend., 159.

So, also, one of the most eminent of American jurists and statesman, Judge Thurman of Ohio, lays down the same rule in language too plain to be mistaken. He says: "The English common law, so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our Federal and State constitutions and statutes, has been and is followed by our courts, and may be said to constitute part of the common law of Ohio. But whenever it has been found wanting in either of these requisites our courts have not hesitated to modify it to suit our circumstances, or, if necessary, to wholly depart from it."

2 Ohio State Rep., 329.

Strictly in accord with this view is the opinion of Chief Justice Wright, of Iowa, where in delivering the opinion of the Supreme Court of that State, after declaring the common law to be there in force, he continues: "To say that every principle of that law, however inapplicable to our wants or institutions, is to continue in force until changed by some legislative rule, we believe has never been claimed, neither indeed could it be with any degree of reason." And further in the same opinion, he says: "When the common law has been repealed or changed by the institution of either the States or National Government, or by their legislative enactments, it is, of course, not binding. *So, also, it is safe to say when it has been varied by custom, not founded in reason, or not consonant to the genius and manner of the people, it ceases to have force.*"

3 Iowa, 402.

Says Mr. Justice Story: "The common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them its general principles and claimed it as their birthright; but they brought with them and adopted *only that portion which was applicable to their situation.*"

2 Peters, 144.

The reports of the American Courts are full of kindred decisions. These are to be found in Illinois (one decision by Judge Trumbull), in Arkansas, in Mississippi, in Pennsylvania, in Massachusetts, in Tennessee, in Wisconsin, and indeed in all the States where the question has ever been raised.

Can any good reason be given why beautiful California should not be subject to the same enlightened rule, or why her fair present should be destroyed and her future made hopeless to enforce the contrary one?

In connection with the proposition here advanced, we beg leave to refer in the appendix to this address, to the case of *Coffin vs. Left-Hand Ditch Co.*, decided by the Supreme Court of Colorado, a great irrigating State like our own, in which the common law pertaining to riparian rights is held to be inapplicable to the condition of the country and to form no part of its laws, *even prior to the adoption of the Constitution, which expressly authorized water appropriation.*

The conclusion must be that, by the Act of 1850, we adopted only such portion of the common law of England as was applicable to our condition, and whatever we did take of the common law included a power and duty existing in Judges and Courts exercising common law jurisdiction to modify the common law when demanded by common necessity, and reconcile conflicting decisions arising either from such modifications or from the misapprehension as to the applicability of any portion of the common law, and this without any usurpation of the powers of the Legislature.

Our courts, including the Supreme Court as it is now constituted, have recognized and acted upon these rules ever since their organization, most frequently in cases involving water rights.

The following is a list of cases involving rights acquired by appropriation, beginning with the Supreme Court as it was first constituted, and ending in

the Court as it now stands, and also cases by the United States Supreme Court:

- Irwin vs. Phillips*, 5 Cal., 140.
Tartar vs. Spring Creek Co., 5 Cal., 397.
Conger vs. Weaver, 6 Cal., 555.
Hill vs. King, 8 Cal., 338.
Butte Co. vs. Vaughan, 11 Cal., 153.
McDonald vs. Bear River Co., 13 Cal., 232.
Rupley vs. Welch, 23 Cal., 455.
N. C. & S. Co. vs. Kidd, 37 Cal., 314.
Osgood vs. El Dorado Water Co., 56 Cal.
Atchison vs. Peterson, 20 Wall., 507.
Basey vs. Gallagher, 20 Wall., 670.
Jennison vs. Kirk, 98 U. S., 458.
Broder vs. Natoma Water Co., 101 U. S., 274.

These cases show that our courts have adopted the rule above stated, and have squarely asserted the power to pass upon the fact as to whether or not a portion of the common law of England was inapplicable to our situation or condition. They also assumed the right to modify the decisions of their predecessors, in a number of cases, as will be readily observed by any who will read the decisions.

Instead of quoting from these various decisions we give an extract from Mr. Judge Field's opinion in *Atchison vs. Peterson*, which summarizes them all. He says (20 Wallace, 511): "As respects the use of water for mining purposes, the doctrines of the common law declaratory of the rights of riparian owners were at an early day, after the discovery of gold found to be inapplicable, or applicable only in a very limited extent to the necessities of miners and inadequate to their protection.

* * * * *

"This equality of right" (riparian), "among all the proprietors on the same stream would have been incompatible with any extended diversion of the water by one prospector, and its conveyance for mining purposes to points from which it could not be restored to the stream. But the Government being the sole proprietor of all the public lands, whether bordering on streams or otherwise, there was no occasion for the application of the common law doctrine of riparian proprietorship with respect to the waters of these streams. The Government by its silent acquiescence assented to the general occupation of the public lands for mining, and to encourage their free and unlimited use for that purpose reserved such lands as were mineral from sale and the acquisition of title by settlement. And he who first connects his own labor with property thus situated and open to general exploration, does, in natural justice, acquire a better right to its use and enjoyment than others who have not given such labor. So the miners on the public lands throughout the Pacific States and Territories, by their customs, usages and regulations, everywhere

“ recognized the inherent justice of this principle; and the principle itself was at an early period recognized and enforced by the Court in these States and Territories.”

In the case of *Basey vs. Gallagher*, 20 Wallace, 682, the views expressed and rulings made, just now quoted, are held equally applicable to the use of water for purposes of irrigation, and no distinction, it is held, is made in those States and Territories by the custom of miners or settlers, or by the Courts, in the rights of the first appropriator from the use made of the water if the use be a beneficial one.

Thus stands the law of appropriation, as applied to the public lands. It had its origin in the necessities of the situation and condition of the people and the country.

The two great resources of the State are, and have ever been, mining and agriculture. The climate, topography and physical condition of the State and the necessities of the people have rendered the diversion of water from streams, both for mining and agricultural pursuits, essential.

All of the lands in the State except Mexican grants were, at the time of our admission into the Union, public lands of the United States. The climate, topography and physical condition of the State and the necessities of the people have not changed in kind since 1850. They have remained the same through all the years, notwithstanding the gradual alienation of land by the Government to individuals. The common law became no less inapplicable because the land no longer remained public.

The same customs and usages in regard to the appropriation of water for all useful purposes were practiced universally, with a total disregard by all of ownership of land whether public or private. It was these usages and customs which caused the courts to take notice of and declare the inapplicability of the common law of England, as to public lands, and to recognize the right of appropriation as to such lands. They performed their duty by ascertaining the fact of the inapplicability of the riparian law, and then declared it not to be the law. The same duty was incumbent on them with relation to lands reduced to private ownership when occasion arose, the inapplicability being the same. But until the case of *Lux vs. Haggin* the opportunity never came, as all cases arising were between appropriators on public lands.

The case of *Ferrea vs. Knipe*, 28 Cal., 340, was the case of an appropriator against one who, claiming as a riparian owner, had stopped all the water of the stream. The question as to whether an appropriator's right was superior to the riparian right was not necessary to the decision, and was not determined. The Court decided that, assuming defendant was a riparian owner, he had no right as such to obstruct all the water in the stream in such a manner as to become lost by absorption and evaporation. All else in the opinion is mere dictum.

As a matter of fact, the question of relative superiority between riparian rights at common law and rights by appropriation are not necessarily in-

volved in any case, except the recent case of *Lux vs. Haggin*, in which the four Justices constituting the majority of the Court held that rights by appropriation cannot be acquired as against a private riparian owner; and this case is on rehearing, and not yet settled law.

Any decision in favor of a riparian owner and against an appropriator, must disregard an existing fact; a fact demonstrated to exist by the customs and usages of thirty-five continuous years—and that is, that the necessities of the people, and the climate and physical condition of the State, make the English riparian doctrine, in any form, inapplicable here. This question of fact yet remains to be finally determined by the Courts.

The law of riparian rights and the law of appropriation will not assimilate. Either can exist only by the exclusion of the other. The true course is to ascertain and determine the question of applicability. The present Supreme Court have the same power and right to determine and declare this, and to reconcile conflicting decisions as their predecessors had.

We submit to your good judgment that the representatives of the people have also a good right to declare by statute the *fact* that the portion common law of England, as expounded by the courts, to be repugnant to and inconsistent with the climate, topography, and physical condition of the State and the necessities of the people thereof, and the laws thereof concerning the appropriation of water for purposes of irrigation. In future water litigation the Supreme Court may accept it, or they may reject it, as binding authority, so far as the past is concerned. Or they may consider it as evidence of the fact, although not conclusive. But with the added clause, "and to that extent form no part of such laws," it will govern their decisions in controversies arising over rights to be hereafter acquired. We shall have no new riparian owners to put stumbling blocks in the way of irrigation.

We ask you, we urge you, in behalf of the irrigators of the State, and in the interest of the entire people, to so legislate upon the subject of irrigation as to assure the continued advance of the State by the development of its agricultural interests through the means of irrigation.

We are convinced that if nothing is done at this session, the progress of the State will receive a serious check, entailing upon the people the loss of millions of property. Your failure to pass the pending bills will be regarded as a public calamity affecting the material welfare of the whole State.

We earnestly request you to enact the bills which we have heretofore urged upon your committees. We believe that the passage of Senate Bill 210 and Assembly Bill No. 410 in the form in which it has already passed the Assembly, is the best possible, indeed, the only feasible solution of the question, as between riparian owners and appropriators. Under the existing state of uncertainty irrigation must be suspended until assured of protection by the law. If riparian rights are to be upheld, irrigation must no longer be numbered as one of our industries. What we ask by this bill is that we may be allowed to pay riparian owners for whatever rights they have to water which is more necessary for irrigation than for any purpose to

which they can apply it; but wish to be protected against their exorbitant demands by a provision for ascertaining just compensation for loss or damage.

If Bills 410 and 210, guaranteeing water for irrigation, shall pass, we further urge the enactment of the bills proposed for the formation of Districts and the regulation of water distribution, for amending the water-right clause in the Constitution and for the adjudication of claims to water.

We do not claim for these measures that they are infallible or beyond criticism. The very men who have declared that this is a subject full of complications and difficulties, have required of us "the presentation of bills to which no objection could be made. No such bill can be framed. With the experience of all the ages of the past, no legislator has ever been able to draw a revenue law free from serious objection, yet no one has argued from this that we should have no revenue laws.

These bills have been carefully prepared, revised and amended. They have the unanimous endorsement of irrigators, and of nearly all the riparian owners on streams where irrigation is carried on. No one has proposed any better measures, and a beginning must be made. There is a burning necessity for action now. We appeal to you with confidence to accede to the united wishes of the people of all California, with few exceptions, and enact all of these bills. With great respect, we remain

Your most obedient, etc.,

J. DEBARTH SHORB,
 J. F. WHARTON,
 W. S. GREEN,
 R. HUDNUT,
 H. S. DIXON,
 L. B. RUGGLES,
 E. H. TUCKER,
 D. K. ZUMWALT,

Legislative Committee of the State Irrigation Convention.

IN THE SUPREME COURT OF COLORADO.

[Spring Term, 1883.]

COFFIN ET AL. v. THE LEFT-HAND DITCH CO.

1. WATER RIGHTS IN COLORADO—NOT GOVERNED BY COMMON-LAW RULES AS TO RIPARIAN PROPRIETORSHIP. The doctrine of priority of right to water by priority of appropriation has existed in Colorado from the earliest appropriations of water within the boundaries of the State, and not simply since 1876, when the Constitution was adopted. The right, from the very nature of the case, existed prior to any legislation on the subject. The-common-law rule is not applicable to Colorado.
2. SAME—PROTECTION OF. The right of one who by prior appropriation has secured the beneficial use of water is entitled to protection as well after patent, to a third party, of the land over which the natural stream flows, as when such land is part of the public domain, whether or not the water be mentioned in or expressly excepted from the grant. The Act of Congress protecting in patents such rights "was rather a voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use, than the establishment of a new one.
3. SAME—LEGISLATION HAD IN VIEW OF THESE RIGHTS BY APPROPRIATION. All the legislation on the subject in Colorado, including the Act of 1861, 1862 and 1864, had in view the existence and protection of rights secured by prior appropriation.
4. SAME—RIGHT NOT DEPENDENT UPON THE LOCUS OF USE. The right of water acquired by prior appropriation is not in any way dependent upon the locus of its application to the beneficial use designed. That such prior appropriation diverts the water from one stream to another, across the natural water-shed, does not affect his rights. The Acts of 1861 and 1862 do not conflict with this view.

Appeal from the District Court of Boulder County.

Messrs. Carr and Kime for appellants.

Richard H. Whiteley for appellee.

HELM, J.:

Appellee, who was plaintiff below, claims to be the owner of certain water by virtue of an appropriation thereof from the south fork of the St. Vrain Creek. It appears that such water, after its diversion, is carried by means of a ditch to the James Creek, and thence along the bed of the same to Left-hand Creek, where it is again diverted by lateral ditches and used to irrigate lands adjacent to the last named stream. Appellants are the owners of lands lying on the margin and in the neighborhood of the St. Vrain below the mouth of said south fork thereof, and naturally irrigated therefrom.

In 1879 there was not a sufficient quantity of water in the St. Vrain to supply the ditch of the appellee and also irrigate the said lands of appellants. A portion of appellee's dam was torn out and its diversion of water thereby seriously interfered with by appellants. The action is brought for damages

arising from the trespass, and for injunctive relief to prevent repetitions thereof in the future.

The answer of appellants, who were defendants below, is separated into six divisions:

First—A specific denial of all the material allegations of the complaint.

Second—Allegations concerning an agreement made at the date of the construction of appellee's ditch; by this agreement the parties constructing such ditch were to refrain from the diversion of water there through when the quantity in the St. Vrain was only sufficient to supply the settlers thereon.

Third, fourth, fifth and sixth, are separate answers by individual defendants setting up a right to the water diverted, by virtue of ownership of lands along the St. Vrain, and in some instances also by appropriations of water therefrom. But it nowhere appears by sufficient averment that such appropriations of defendants' making the same were actually made prior to the diversion of the water through appellee's ditch.

Demurrers were sustained to all of the above defenses or answers, except the first, and exceptions to the rulings duly preserved; trial was had before a jury upon the issues made by the complaint and answer as it then remained, and verdict and judgment given for the appellee.

Such recovery was confined, however, to damages for injury to the dam alone, and did not extend to those, if any there were, resulting from the loss of water.

We do not think that the Court erred in its ruling upon the demurrers, and we believe the verdict and judgment sustained by the pleadings and evidence.

Were we to accept appellants' views upon the subject of water rights in this State, it would yet be doubtful if we could justify the trespass. And if the agreements were actually made as stated in the second defense, that fact would not excuse their act in forcibly destroying the appellee's dam without notice or warning. It is sufficient upon this subject for us to say that, even if such agreement were legal and binding, and included subsequent settlers on the St. Vrain, yet appellee was entitled to notice of the insufficiency of water to supply the demands of appellants; it might then, perhaps, have complied with the agreement without serious injury to its property.

But two important questions upon the subject of water rights are fairly presented by the record, and we cannot well avoid resting our decision upon them.

It is contended by counsel for appellants that the common-law principles of riparian proprietorship prevailed in Colorado until 1876, and that the doctrine of priority of right to water by priority of appropriation thereof was first recognized and adopted in the Constitution. But we think the latter doctrine has existed from the date of the earliest appropriations of water within the boundaries of the State. The climate is dry, and the soil, when moistened only by the usual rainfall, is arid and unproductive; except in a few favored sections, artificial irrigation for agriculture is an absolute neces-

sity. Water in the various streams thus acquires a value unknown in moister climates. Instead of being a mere incident to the soil, it rises, when appropriated, to the dignity of a distinct usufructuary estate or right of property. It has always been the policy of the National, as well as the Territorial and State Governments, to encourage the diversion and use of water in this country for agriculture, and vast expenditures of time and money have been made in reclaiming and fertilizing by irrigation portions of our unproductive territory. Homes have been built and permanent improvements made, the soil has been cultivated, and thousands of acres have been rendered immensely valuable, with the understanding that appropriations of water would be protected. Deny the doctrine of priority or superiority of right by priority of appropriation, and a great part of the value of all this property is at once destroyed.

The right to water, in this country, by priority of appropriation thereof, we think it is and has always been the duty of the National and State Governments to protect. The right itself, and the obligation to protect it, existed prior to legislation on the subject of irrigation. It is entitled to protection as well after patent, to a third party, of the land over which the natural stream flows, as when such a land is a part of the public domain, and it is immaterial whether or not it be mentioned in the patent and expressly excluded from the grant.

The Act of Congress protecting in patents such right in water appropriated, when recognized by local customs and laws, "was rather a voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use, than the establishment of a new one."

Broder vs. Natoma W. & M. Co., 11 Otto, 274.

We conclude, then, that the common-law doctrine giving the riparian owner a right to the flow of water in its natural channel upon and over his lands, even though he make no beneficial use thereof, is inapplicable to Colorado; imperative necessity, unknown in the countries which gave it birth, compels the recognition of another doctrine in conflict therewith. And we hold that, in the absence of express statutes to the contrary, the first appropriator of water from a natural stream, for a beneficial purpose, has, with the qualifications contained in the Constitution, a prior right thereto to the extent of such appropriation.

See *Schilling vs. Rominger*, 3 Col., 103.

The Territorial Legislature, in 1864, expressly recognizes the doctrine. It says:

"Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, millmen or others along the line of said stream, *who may have a priority of right*, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

Session Laws 1864, p. 58, Sec. 32.

The priority of right mentioned in this section is acquired by priority of appropriation; and the provision declares that appropriations of water shall be subordinate to the use thereof by prior appropriators. This provision remained in force until the adoption of the Constitution; it was repealed in 1868, but the repealing Act re-enacted it *verbatim*.

But the rights of appellee were acquired in the first place under the Acts of 1861 and 1862; and counsel for appellants urge, with no little skill and plausibility, that these statutes are in conflict with our conclusion that priority of right is acquired by priority of appropriation. The only provision, however, which can be construed as referring to this subject, is Section 4, on page 68, Sess. Laws of 1861; this section provides for the appointment of commissioners, in times of scarcity, to apportion the water of the stream "in a just and equitable proportion," to the best interests of all parties concerned, *with a due regard for the legal rights of all.*" What is meant by the concluding phrase of the foregoing statute? What are the legal rights for which the commissioners are enjoined to have a "due regard?" Why this additional limitation upon the powers of such commissioners?

It seems to us a reasonable inference that these phrases had reference to the rights acquired by priority of appropriation. This view is sustained by the universal respect shown at the time said statute was adopted, and subsequently by each person for the prior appropriations of others; and the corresponding customs existing among settlers with reference thereto. This construction does not, in our judgment, detract from the force or effect of the statute. It was the duty of the commissioners under it to guard against extravagance and waste, and to so divide and distribute the water as most economically to supply all of the earlier appropriators thereof, according to their respective appropriations and necessities, to the extent of the amount remaining in the stream.

It appears from the record that the patent under which appellant, George W. Coffin, holds title, was issued prior to the Act of Congress of 1866 hereinbefore mentioned; that it contained no reservation or exception of vested water rights, and conveyed to Coffin, through his grantor, the absolute title in fee-simple to his lands, together with all incidents and appurtenances thereunto belonging; and it is claimed that, therefore, the doctrine of priority of right by appropriation cannot, at least, apply to him. We have already declared that water appropriated for a beneficial purpose is, in this country, not necessarily an appurtenance to the soil through which the stream supplying the same naturally flows; if appropriated by one prior to the patenting of such soil by another, it is a vested right entitled to protection, though not mentioned in the patent. But we are relieved from any extended consideration of this subject by the decision in *Broder vs. Natoma W. & M. Co.*, *supra*.

It is urged, however, that even if the doctrine of priority or superiority of right by priority of appropriation be conceded, appellee in this case is not

benefited thereby. Appellants claim that they have a better right to the water, because their lands lie along the margin and in the neighborhood of the St. Vrain. They assert that, as against them, appellee's diversion of said water to irrigate lands adjacent to Left-hand Creek, though prior in time, is unlawful.

In the absence of legislation to the contrary, we think that the right to water acquired by priority of appropriation thereof is not in any way dependent upon the *locus* of its application to the beneficial use designed. And the disastrous consequences of our adoption of the rule contended for, forbid our giving such a construction to the statutes as will concede the same, if they will properly bear a more reasonable equitable one.

The doctrine of priority of right by priority of appropriation for agriculture is evoked, as we have seen, by the imperative necessity for artificial irrigation of the soil. And it would be an ungenerous and inequitable rule that would deprive one of its benefit simply because he has, by large expenditure of time and money, carried the water from one stream over an intervening water-shed, and cultivated land in the valley of another. It might be utterly impossible, owing to the topography of the country, to get water upon his farm from the adjacent stream; or, if possible, it might be impracticable on account of the distance from the point where the diversion must take place, and the attendant expense; or the quantity of water in such stream might be entirely insufficient to supply his wants. It sometimes happens that the most fertile soil is found along the margin or in the neighborhood of the small rivulet, and sandy and barren land beside the larger stream; to apply the rule contended for would prevent the useful and profitable cultivation of the productive soil, and sanction the waste of water upon the most sterile lands. It would have enabled a party to locate upon a stream in 1875, and destroy the value of thousands of acres, and the improvements thereon, in adjoining valleys, possessed and cultivated for the preceding decade. Under the principle contended for, a party owning land ten miles from the stream, but in the valley thereof, might deprive a prior appropriator of the water diverted therefrom, whose lands are within a thousand yards, but just beyond an intervening divide.

We cannot believe that any legislative body within the Territory or State of Colorado ever *intended* these consequences to flow from a statute enacted. Yet two sections are relied upon by counsel as producing them. These sections are as follows:

"All persons who claim, own or hold a possessory right or title to any land or parcel of land within the boundary of Colorado Territory * * * when those claims are on the bank, margin or neighborhood of any stream of water, creek or river, shall be entitled to the use of the water of said stream, creek or river, for the purpose of irrigating, and making said claims available to the full extent of the soil, for agricultural purposes." Session Laws, 1861, p. 67, Sec. 1.

"Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, millmen or others along the line of said

stream, and there shall be at all times left sufficient water in said stream for the use of miners and farmers along said stream." Latter part of Sec. 13, p. 48, Sess. Laws 1862.

The two statutory provisions above quoted must, for the purposes of this discussion, be considered together. The phrase, "along said stream," in the latter is equally comprehensive, as to extent of territory, with the expression "on the bank, margin or neighborhood," used in the former. And both include all lands in the immediate valley of the stream. The latter provision sanctions the diversion of water from one stream to irrigate lands adjacent to another, provided such diversion is not to the "detriment" of parties along the line of the stream from which the water is taken. If there is any conflict between the statutes in this respect, the latter, of course must prevail. We think that the "use" and "detriment" spoken of are a use existing at the time of the diversion, and a detriment or injury immediately resulting therefrom. We do not believe that the Legislature intended to prohibit the diversion of water to the "detriment" of parties who might at some future period conclude to settle upon the stream; nor do we think that they were legislating with a view to preserving in said stream sufficient water for the "use" of settlers who might never come, and consequently never have use therefor.

But "detriment" at the time of diversion could only exist where the water diverted had been previously appropriated or used; if there had been no previous appropriation or use thereof, there could be no present injury or "detriment."

Our conclusion above as to the intent of the Legislature is supported by the fact that the succeeding Assembly, in 1864, hastened to insert into the latter statute, without other change or amendment, the clause "*who have a priority of right,*" in connection with the idea of "*detriment*" to adjacent owners. This amendment to the statute was simply the acknowledgement by the Legislature of a doctrine already existing, under which rights had accrued that were entitled to protection. In the language of Mr. Justice Miller above quoted, upon a different branch of the same subject, it "was rather a voluntary recognition of a pre-existing right, constituting a valid claim, than the creation of a new one."

Error is assigned upon alleged defects in the proof of appellee's incorporation.

But this is an action of trespass; the defendants below were, according to the verdict of the jury, and according to the views herein expressed, wrongdoers; and, considering the nature of the action, we think the proof of incorporation sufficient.

The judgment of the Court will be affirmed.

The Spirit of the Press on the Subject of Irrigation.

Kern County Californian.

Proceedings of the Senate Irrigating Convention.

In our last issue we gave a sketch of the proceedings of this Convention, covering the first day of the session. We mentioned that when the Convention convened at Riverside last year, standing committees on Resolutions and Legislation were appointed, to report at the present meeting. They were not ready to do so, and it was agreed to add three additional members to each committee, to be appointed by the Chair. The writer had the honor to be appointed to that on Resolutions. The two committees were directed to deliberate and act together, and subsequently they were combined into one. The duty of this combined committee was to prepare the work of the Convention; to decide upon and prepare the points upon which legislation was required, and submit their work to the Convention for discussion and approval. As James DeBarth Shorb, Chairman of the Committee, was also Chairman of the Convention, a Vice-Chairman was appointed to preside over that body while he attended the deliberations of the committee. The committee immediately retired to a room prepared for the purpose. It comprised 18 members and we were surprised at their intelligence, ability and thorough understanding of the subject. Several of them were able, experienced lawyers, three were editors, and the rest canal-owners and irrigators. There was no hesitancy about proceeding to business. Each member was full of the subject, and more work was proposed than could have been accomplished in a month. The most important matters were selected, such as were believed would cover the entire ground, and these alone acted upon. Nothing was adopted without discussion, or until all opposition was overcome and a unanimous vote could be had. Each member kept steadily in view the wants and interests of his own district, and as it was not always possible to harmonize them, a great deal of prolonged and warm discussion was the result, and while there was some not fully satisfied, they were convinced that they could not have been granted more consistent with the general interest. As the work progressed it was reported to the Convention, and last Saturday the final report was made and, after some discussion, the work of the committee was adopted unanimously; whereupon the Convention adjourned, after first perpetuating the committee, which divided itself into various departments for different branches of work, the principal of which are the Executive and Finance Committees, the latter of which added to itself several members from the outside whom it was thought could render essential aid in this de-

partment, and a meeting of the entire committee was had subsequent to the adjournment of the Convention, at which a definite understanding of the work to be done was had and final arrangements made. The amount of money necessary for immediate use was estimated and apportioned among the counties principally interested in irrigation. The Executive Committee was assigned the task of framing the matters adopted by the Convention into bills, which they are to see presented simultaneously in both Houses of the Legislature, and the passage of which they are to urge personally by every honorable means in their power. The bills they are authorized to introduce will, no doubt, effectually settle all the difficulties in the way of irrigation, especially riparian rights, if the final decision of the Supreme Court should sustain them. In that event, which we believe is not unlikely, a way has been devised to get them out of the way and apply all the running streams of the State to irrigation, on a basis of justice to all who require water for that purpose.

The following are the ideas adopted by the committee and approved by the Convention, which, as far as necessary, are to be shaped into bills by the Executive Committee and their enactment into laws by the Legislature, urged:

1st. That the cubic foot per second be adopted as the unit of measurement throughout the State.

2d. It is important and desirable to institute a system of making all water rights a matter of proof and record.

3d. A declaration by the Legislature that all the waters of the State in natural streams and lakes belong to the people, and are subject to appropriation by the people for irrigation, mining, manufacturing; and other useful purposes.

4th. To provide such machinery for the voluntary formation of irrigation districts by which the owners of lands may acquire water rights, and assess the land for the purpose of constructing canals, ditches, or other irrigation works, or for purchasing those already constructed.

Provided, that waters already appropriated shall thereafter be utilized as at present through existing works or the extension of the same, so far as may be necessary, for the irrigation of lands dependent thereon; and further provided, that no lands shall be taxed for the construction of works of irrigation, except lands actually to be irrigated by said works.

5th. To so extend the Law of Eminent Domain as to allow an irrigation district, or a corporation, outside of an irrigation district, to condemn and pay for rights of way, lands, canals, ditches, and water-claims and rights of whatever nature held by any person or corporation, or any other private rights of property, however existing or acquired, or by whatever name designated, which may be necessary for the appropriation or use of water.

Provided, that in condemning, water used at the time of the commencement of an action for the same, a manifest greater public interest shall be shown.

[That the irrigation district with power to condemn is defined as the sub-district within the hydrographic district, while the hydrographic district is one without condemnatory power, but with regulation power only.]

6th. To provide for a thorough and complete annual accounting for all the waters used by any and all districts or companies, and for a proper distribution of the waters of any stream between appropriators, and for such other police regulations as may be necessary.

7th. That Section 1492 of the Civil Code, which declares that the rights of riparian proprietors are not affected by the preceding twelve sections of the Code providing for rights to water by appropriation, should be repealed, and its place supplied by a declaration that the common law of riparian rights does not apply to this State.

8th. That a change should be made in the law of limitations as regards diversions of water.

9th. That the committees on Legislation and Resolutions be consolidated and be known as the Legislative Committee, and be continued in existence after the adjournment of the Convention, with power to draw, or cause to be drawn, a bill, or bills, for passage by the Legislature, according to the principles embodied in their report, as approved by this Convention, and to present the same to the next Legislature for passage; and to do such other things as they deem proper to effect the objects of this Convention; and with power also to appoint from among its members an Executive Committee, with the usual powers of such committee.

The following was adopted as their views of law by the committee and approved by the Convention:

1. Where there is so wide a diversity of opinion as now exists in this State, as to what the law is in relation to water rights, it is clearly the duty of the law-making power to so improve it as to leave it free from all ambiguity, and render it definite and easy to be understood by the people and the courts.

2. That the Legislature has this power, is made plain by Section 2, Article I, of the Constitution, which reads as follows: "All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it."

3. The Constitution of our State recognizes and sanctions the appropriation of water, and does not recognize or sanction the doctrine of riparian rights. Its language is as follows: "The use of all water now 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."

4. Title 8th of the Civil Code, providing for the appropriation of water, is the law of the State, and wherever the common law of England is antagonis-

tic to or inconsistent with any section of said title, it has no force or effect as law in this State.

5. Law is defined by our Code as "the will of the people solemnly expressed." The language of the Code is as follows:

"Section 4466. Law is a solemn expression of the will of the supreme power of the State.

"Section 4467. The will of the supreme power is expressed—

1. By the Constitution.
2. By the Statutes.

"Section 4468. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.

In view of the fact that the Governor was then probably engaged in the preparation of his message, it was agreed to call his attention to the importance of this question of irrigation, and that a memorial should be drawn up, engrossed and sent to him without delay. W. S. Green, editor of the *Colusa Sun*, and a member of the committee, was appointed to draw up such memorial. He performed his task promptly, and his work was approved by the committee and confirmed by the Convention as follows:

To His Excellency George Stoneman, Governor of California: Your memorialist, the State Irrigation Convention, assembled at Fresno, respectfully begs leave to call your attention to the great value of the interests involved in the matter of irrigation, to its importance to California as a State, and to the fact that much remains to be done by the State in its sovereign capacity to make the rights of irrigators certain, definite and secure, and request that Your Excellency will lay the same before the Legislature, with such recommendations as in your judgment shall be right and proper. The land that must be irrigated in the immediate future in the San Joaquin and Sacramento valleys embrace an area of not less than 5,000,000 acres. This area does not embrace more than one-half the possibility of the future. There is available water enough to supply all the land. Upon a very large portion of this area the rainfall is so small as to make farming an impossibility without irrigation, and upon the whole of it the rainfall is so uncertain as to prevent that diversity of farming so necessary to the prosperity of a people. Furthermore, all the counties to the south of the San Joaquin Valley depend upon irrigation for their prosperity. With the proper encouragement and security given to irrigation, millions of people will in a few years be added to this great and fertile territory; but with irrigation hampered, thwarted and destroyed by an unfriendly attitude of the law-making and law-executing authorities of the State, the present population of this territory is greater than can be supported, and instead of adding millions, a loss of tens of thousands must be suffered. Notwithstanding the imperfections and uncertainty of our laws, and their adverse construction by our Courts, great inter-

ests have grown up that if permitted to fall through must blight the prosperity of our State. It is hardly necessary to enamerate to you in detail *all* that has been done. In Fresno county there has been constructed 200 miles of main canal, at a cost in round numbers of \$1,000,000, irrigating at the present time 394,000 acres of land. Tulare County has constructed 250 miles of canal, at a cost of \$1,000,000, and irrigates 200,000 acres of land. Kern County has 200 miles, costing about \$2,000,000, and irrigating 600,000 acres of land. Los Angeles County has in operation about 120 miles of canal, constructed at a cost of — and waters 60,000 acres of land. San Bernardino County has 100 miles of canal and has 14,000 acres under irrigation, costing \$500,000. Merced County has in course of construction a canal with a capacity of 3,000 cubic feet per second, upon which \$500,000 has been expended, and it will require \$500,000 more to complete it. It will water 360,000 acres. These lands with water are the most fertile and productive on the face of the earth. Without it they are arid and worthless. In other counties of the State there are other works either contracted or in course of construction, and with proper encouragement and protection these works will go on and on until California will become the garden of the world. These irrigated lands are divided generally into small farms of ten to forty acres, and upon each is a family, contented, prosperous and happy.

To give you some idea of the value of the water so used for irrigation, we have simply to refer to the fact notwithstanding the adverse circumstances above set forth, water rights and irrigable lands otherwise of no value, are worth in the market almost fabulous prices. In San Bernardino county there are two ditches, the shares in which are selling at from \$800 to \$1200 per share, each share being equal to about one inch of water. This would make the water worth from \$40,000 to \$64,000 per cubic foot per second. Unimproved land at Riverside is selling at from \$200 to \$300 per acre, with the privilege of water, while land with no immediate prospect of water, but equal otherwise, will bring but a nominal price. These are by no means exaggerated or isolated instances. On the contrary, with the fostering care of California's sovereignty and power rightly and judiciously exercised, giving encouragement to settlers and tillers of the soil, and security to capital, that portion of California now considered valueless for farming purposes without irrigation, will become the most densely populated, the most valuable portion of the American Continent. Take what has been done, even under adverse circumstances, and multiply the result by the cubic feet of water, and the acres of land that can be brought together, and the sum almost staggers the credulity of man, and the recital of results would seem more like an Arabian tale than a plain statement of facts. In view of what has been accomplished; in view of the possibilities of the future, your memorialist feels that it is not asking too much when it prays for the support of the power of the State, and the enactment into statute law of the following privileges :

1. Making the cubic foot per second the unit of measurement.
2. Making water rights a matter of proof and record.

3. Declaring that all the waters of the State in natural streams and lakes belong to the people, and are subject to appropriation by the people for irrigation, mining, manufacturing and other useful purposes.

4. Providing machinery for the voluntary formation of irrigation districts, by which the owners of land may acquire water rights, and assess the land for the purpose of constructing or purchasing works of irrigation, and preserving rights already acquired.

5. Extending the law of Eminent Domain so as to allow irrigation districts or corporations outside of irrigation districts to condemn, take and pay for right of way lands, canals, riparian claims, and such other private, or corporate property as may be necessary, always, however, having in view the greater public use.

Providing for an annual accounting for all the waters in the State used for irrigation, and for a proper distribution of the waters between appropriators, and for such other public regulations as may be necessary.

The following was adopted to be shaped into the form of a memorial to Congress:

Resolved, That it is the desire of the irrigators of California that the U. S. Government should adopt measures to preserve the water sheds and sources of supplies of the springs and streams now used, or which are likely to be used for irrigation in California.

Fires in the mountains should be carefully guarded against. Ripe timber should be so cut, when taken, as to insure a second or new growth, and should only be cut in such quantities as will not materially effect the melting of the snows in the warm season.

Verdure on mountains arrests the rains and water percolates into veins on which the springs depend. Forests have a marked effect on the melting of snow, retarding it very much, so that snow in a forest which would be months in dissolving and running off, would on a bare hill, under like temperature, disappear much more rapidly even to the extent of creating disastrous floods, as has often been the case under these conditions.

Carelessness of hunters, shepherds and brush-burners, and the natural demands of commerce for firewood and lumber, must, if not regulated, make such changes in the reservoirs of our mountains and so diminish their water-holding capacity, as to seriously, if not permanently injure the agriculturalists and others dependent on their waters.

We therefore urge this subject to the attention of the proper authorities, especially of our Senators and Congressmen, and pray for their favorable action.

The following resolutions were adopted, some of them recommended by the Committee and others proposed directly to the Convention by members of that body:

Resolved, That Dewey & Co. be employed to print 1000 copies of the proceedings of this Convention, in pamphlet form for the sum of \$100, to be delivered in two weeks.

Resolved, That a Finance Committee of seven be appointed to raise funds to meet expenses incident to this convention, and for all other necessary expenses.

Resolved, That Will S. Green be appointed a committee of one, with authority to expend a sum not to exceed \$150, for the printing and circulation of a newspaper supplement containing the address of George Church, and the reports of the Joint Committee as adopted by this Convention.

Resolved, That the sincere thanks of the members of this Convention who have come from a distance, are due and most cordially tendered to the citizens of Fresno for the many courtesies extended and the attention shown to visiting members.

Resolved, That the Secretary of this Convention prepare a petition to the State Legislature, setting forth the principles adopted by this Convention in guiding its Legislative Committee in the drafting of proposed Legislative enactments, and asking the Legislature to favorably consider the same, and that these blank petitions be circulated through the State with a view to securing the largest possible number of names to the same.

Resolved, That this Committee would earnestly request that all friends of irrigation, now members of this Convention, will in their individual capacity, visit Sacramento during the session of the Legislature, to aid and assist the Executive Legislative Committee to secure such legislation now demanded by, not only every irrigator, but also by every true citizen and lover of his State.

Resolved, That any member of the Executive Committee who may not be able to attend the meetings of such Executive Committee, may appoint another member of the Committee on Legislation to represent him at such meeting.

Resolved, That the members of this committee are authorized and requested to use all proper influence in obtaining the endorsement of all public bodies in this State on the action of this Convention.

Resolved, That the Chair appoint a committee of three to proceed to San Francisco and attend the meeting soon to occur of the Board of Trade and Board of Irrigation of that city, there to represent our interests, and to obtain their aid and endorsement; and that the Chairman of the Convention be made the Chairman of the Committee.

Resolved, That we recommend that the office of State Engineer be continued, and that the necessary appropriations be made by the next Legislature to complete the work already cut out, and such other work as may be necessary in connection with the duties of said office.

Resolved, That the thanks of this Convention, and we believe we hazard nothing in saying the thanks of every one connected with the subject of

irrigation, are most heartily tendered to the present incumbent for the very able, efficient and thorough manner in which the work has been conducted so far, and believe it was a wise and fortunate selection when the duties of the office were committed to the care of that very efficient officer, William Ham. Hall.

Resolved, That the Chairman of this Convention appoint a committee of three, who shall examine the reporter's transcript, arrange the proceedings of this body in proper order, make all necessary corrections, and turn the same over to the publisher.

Resolved, That, whereas, the Supreme Court has ordered a rehearing of the water case recently decided, in order to give opportunity for others than the parties to the suit to intervene and be heard before a final decision of the case, and

WHEREAS, other appropriators are preparing to represent their interests before that Court; and whereas, the number of irrigators is as a hundred to one when compared with the appropriators.

Resolved, That this Convention recommends to the small irrigators of the State, whose places must become desolate if riparian rights prevail, to take measures to be properly represented before that Court, that they may make a final appeal for a fair consideration of their rights before their ruin becomes final.

The Executive Committee has power to call the Convention together again whenever, in their opinion, it shall be advisable. A motion made in convention that the next meeting be called at Sacramento was lost. The permanent committees appointed to act after the adjournment of the Convention are composed of the following members:

EXECUTIVE.—J. D. B. Shorb, Los Angeles; F. H. Wharton, Fresno; H. S. Dixon, Fresno; W. S. Green, Colusa; L. B. Ruggles, Tulare; S. M. Holt, San Bernardino; R. Hudnut, Kern; E. H. Tucker, Fresno; D. K. Zumwalt, Tulare.

COMMITTEE ON BOARD OF TRADE.—J. D. B. Shorb, Los Angeles; J. W. North, Fresno; P. Y. Baker, Tulare.

FINANCE.—T. Hughes, Fresno; J. D. B. Shorb, Los Angeles; C. I. F. Kitchener, Tulare; J. G. North, San Bernardino; W. S. Green, Colusa; A. Weihe, San Francisco; R. Hudnut, Kern; Dr. Ricker, Merced.

S. F. Alta.

Paste This in Your Hat.

The bill to make irrigation lawful and possible, has passed the Assembly by the following vote:

Ayes—Messrs. Ashe, Banbury, Barnes, Barnett, Buhlert, Carter of Contra Costa, Clark, Cook, Corcoran, Daley, Deveny, DeWitt, Dooling, Franklin,

French, Goucher, Gregory, Hazard, Henley, Hunt, Hussey, Johnson, Jordan, Kalben, Lafferty, Long, Loud, Lovell, May, McDonald, McGlashan, McMurray, Mears, Moffit, Munday, Patterson, Pellett, Pyle, Reeves, Roseberry, Russ, Sullivan, Swayne, Torrey, Van Voorhies, Watson of El Dorado, Ward of San Francisco, Weaver, Woodward, Yule and Mr. Speaker—51.

Noes.—Messrs. Allen, Colby, Coleman, Davis, Ellison, Firebaugh, Heath, Henry, Heywood, Hollister, Jones, McJunkin, Walrath, Watson of Alameda, Ward of Butte, and Wood—16.

The lead which Assemblyman Jordan took in the filibustering of the enemies of irrigation, together with his notice of motion to reconsider the passage of the bill, given for the purpose of delaying the transmission of the bill to the Senate, places him with the sixteen "noes" who have recorded themselves in favor of restoring Southern California to its primeval condition of wilderness and desert. Out of all the irrigation measures offered to the Legislature for consideration, this bill alone contained assurances which make irrigation possible. All other bills upon the subject are either for the regulation of the use of water for purposes of irrigation, the adjudication of conflicting claims to water for the same purposes, or for the perpetuation of foul and pestilential swamps of the great basin of the San Joaquin in the interest of half a dozen greedy cattle kings. The simple question presented to the Assembly by this bill was, shall the waters of natural streams be applied to the development of the State by irrigation, or shall they be confined to their channels, so that such water as is not lost by evaporation, absorption or dissipation in swampy hog wallows, must flow uselessly to the ocean? Fifty Assemblymen responded to these questions by an "aye," announcing themselves as men who either knew the necessities and demands of the people, or believed that the people, in demanding the right of irrigation, knew their own necessities. Seventeen out of eighty of the assembly, less than one-fourth of that body, declared themselves against irrigation, against farming, fruit-raising, viticulture and horticulture in Southern California. Every "no" put himself on the record against encouraging immigration into Southern California; as opposed to opening up the magnificent resources of the San Joaquin Valley; as opposed to preserving to one-fifth of the people of the State the fruits of many years of industry; as favoring the abandonment of the irrigable land of half of the State to the lizard, the horned toad, and the burning sun. The people of this State will remember the fifty—neither will they forget the seventeen. The first roll-call in the Senate on this bill is watched for with interest, and will be a companion list to the above, to show the people who are the friends of State progress, and who, in defiance or disregard of public need, cast their votes to destroy whole communities of people and bring disaster to a fair land.

Kern County Californian.

The Governor's Message on Irrigation.

The Governor sent his message to the two Houses of the Legislature last Saturday, which after being partially read in each House, the further reading, owing to its great length, was dispensed with, and it was ordered printed for the use of members. It is a well written paper and, although of unusual length, nothing in it appears that could, with due regard to the public interests, have been left unsaid. He makes many wise and useful recommendations, few of which, from the shortness of the session and the disposition of Legislators to waste time, it is feared, will be acted upon. It is a surprise to the general public to learn that the finances of the State are in good condition. He shows that there has been progressive decrease in the rate of State taxation. If the railroads would pay their taxes it would be very light in future. The fact is mentioned that the Controller has discovered defalcations on the part of State officers amounting to \$167,537.77, and in this connection, he says:

"I would recommend that additional clerical aid be furnished the Controller to enable him to prosecute inquiries in other directions, the force now allowed him by law being only sufficient for the performance of the usual routine work of the office during office hours."

The portions of the message, however, that chiefly interest the people of this county, are the following :

"The subject of general agricultural irrigation is one which has for many years been gradually but surely increasing in importance, until the questions to which it gives rise have come to take rank as leading issues in our State. And since the prosperity of our people is largely dependent upon the results of the artificial union of waters and soils, it becomes my duty to ask your most serious attention on this subject.

"The question of irrigation is not a local one, interesting only particular portions of our State. Our climatic surroundings make California a region where artificial watering is an absolute necessity for the full development of our agricultural resources, and the possible requirements and support of populations such as exist in our sister States of the Atlantic seaboard. Therefore, let the representative of no county consider that his constituents are not closely concerned in the irrigation problem, for all agricultural districts in the State are by nature irrigation regions of some type, and are to be developed as such in the not distant future. Every community has interests more or less directly staked upon success in applying waters to thirsting lands.

"It is clearly evident that this union of lands and waters cannot be accomplished under a law which gives every dweller upon the bank of each stream the right to have the waters flow, as by nature designated, within their banks.

"Our Supreme Court, by a recent decision, has declared such law to exist; and while this decision is, no doubt, in accordance with the law as it now

stands on our statute books, it appears that a new enactment is necessary to meet the wants of our people. If the owners of the stream channels own the waters, then there should be a law under which, after due compensation, these waters may be taken and used in irrigation. Such legislation is necessary, whether the irrigation is to be practiced alone on bank lands or on those not bordering the streams. For, as the right to hold the water in the streams is an individual one, appurtenant to each land owner on the bank, it is evident that one property owner on the bank has it in his power to defeat a proposed plan of irrigation desired by the entire community in which he resides.

“The issue is not one between riparian claimants and appropriators of water, corporate or individual, in either case, but between the outstretched plains, from river to river, on the one hand, and the lands bordering the river channels on the other. Shall the waters fructify our plains, or shall they be lost in the sandy beds of the stream channels, or, flowing onward, be lost in the sea? Our Constitution protects the rights of property, and our Courts, in accordance therewith, adjudicate on property questions as between individuals. The duty of the Legislature is to provide laws such as will insure the prosperity of the general commonwealth.

“The conflict between riparian claimants and the appropriation interest is not the only problem presented by the irrigation question. There is another class of conflicts which are continually in progress between the different users of water, and which are only kept within moderate bounds by the apparent necessity for appropriators to unite and make common cause against the riparian interest. These clashings are the result of the defects in our water-right system, if such it can be called, which accords privileges without requiring sufficient proof and adequate recordation of the fact of use. Rights to use water, under our Civil Code, are mere undefined and unproven claims, the extents and dates of which are known only to their holders or claimants. There never can be any settled condition of affairs in the irrigation interests till this evil is remedied, whatever be the solution of the problem of riparian rights. There should be a record and title to water claims as clear and indefeasible as to land holdings, and the enactment of a wise law would, in my opinion, accomplish this.

“Water-rights being definitely adjusted, determined and recorded, the question of the administration of the streams presents itself as a living issue. Even when the extent of individual rights is clearly known, it is not expected that twenty or thirty claimants of water, under, perhaps, more than a hundred claims of different dates, and for varying amounts, scattered for many miles along a stream which is continually varying in volume, will be able to fairly part out their portions of the water, unless there is some authority which will compel observance of the law and obedience to administrative action. The history of these questions uniformly tells us that such rights must be administered by some executive power, or unending litigation and injured interests result, until the strong, overcoming the weak, monopoly

of waters follow, and monopoly of land is the final result. There must be administration of streams where irrigation is practiced, and for this some carefully devised legislation is necessary. * * *

“During the two years just past the State Engineer has been chiefly engaged in completing his general report on the subject of irrigation, together with the special maps of the State heretofore ordered to be made. His work is now in the condition wherein publication should be commenced.”

San Francisco Chronicle.

The Irrigation Bills.

The prospect of legislation on the water question looks better. The House has ordered the bill creating water districts to be engrossed, by a vote which shows that there is in reality no serious opposition to the measure; and Bill 210, repealing Section 1422 of the Code, is in a fair way to become a law. The representatives of the Fresno Convention stick to their notion about a Legislative “declaration” as to what constitutes the law. But, after all, this idle formality can do no harm. We suppose that if the Legislature should pass a bill to declare that two and two make four, or that the sun rises in the east, no practical mischief would follow.

The essential point is to provide machinery for the condemnation of water rights by the State in the name of the people, and for the just distribution of water after it has been acquired for a public use. This point, it is believed, is measurably secured by the bill which was engrossed in the Assembly on Thursday. If the Senate can be persuaded to act promptly in accord with the House, this bill alone will repay to the State the cost of the Legislative session. What is needed is to get the business of State irrigation started. Once started, it can be improved upon and modified as circumstances dictate. It is not to be expected that we can establish a perfect system of irrigation at the first jump. Other countries have taken centuries to mature their systems.

The public are watching, not without uneasiness, the course of the Senate on this question. It is known that the riparian owners have some strong friends in that body, and indications have not been wanting that certain Senators are prepared to adopt an obstructionist policy, doubtless in the interest of the capitalists, who foresee that legislation will defeat their hopes of securing a monopoly of water. The friends of irrigation must be vigilant and wary. They doubtless control a majority of the body, but their objects may be defeated by parliamentary tactics. No time should be lost in passing Reddy's bill for the acquisition and distribution of water. All effort should be concentrated on this measure, to the exclusion of others of less importance. When machinery is provided to carry out the great principle that the water-ways, as the highways, of the State belong to the people thereof, irrigation will be in a fair way of becoming a practical reality.

San Francisco Post.

The Irrigation Bills.

Both houses of the Legislature are engaged daily in considering the irrigation question, and endeavoring to formulate a law practically adaptable to our peculiar local conditions. Under the decision of our courts, the old English common law of riparian rights has, up to this time, held good; but it has been plain to every observing citizen, that the continuance of this rule would work great injury to the State by seriously retarding the development of its resources. Quite a number of bills are pending before each of the legislative branches, which, though they differ in detail, all have embodied in their scope and meaning the proposition that the waters of running streams may be utilized for irrigating purposes. The riparian owners object to this declaration, and adduce some plausible arguments in their own behalf. They assert that they purchased their lands at a comparatively high figure because of their water facilities, which entered into the computation of the value of the property, and that it is not fair that they should be deprived of this principal element of value. We do not understand that any pending bill proposes to absolutely deprive the riparianist of such water as he may need for his farming, manufacturing or domestic purposes, but it is proposed that water, which can be utilized in the irrigation of lands which, without it, would be valueless, shall not be permitted to go to waste by flowing off into the sea. The first thing for the Legislature to do, is to sit down emphatically and unmistakably on the pretensions of the riparianists that, because they own strips of land on the banks of rivers, the waters of such rivers belong to them alone. The establishment of such a doctrine would retard the development of the State indefinitely, while its rejection, and the legal declaration that the waters of our streams shall be used to irrigate our lands, would correspondingly advance it. As to the pending bills, their respective merits and the details embodied in them for the execution of various systems, are matters of comparatively small moment. Let the principle contended for by the irrigationists be thoroughly established, and all will be well.

San Francisco Examiner.

A Wolf in Sheep's Clothing.

Why Senator McClure's filibustering bill to establish a Commission to examine and report upon water rights and irrigation should be called a "compromise," is a mystery to the common understanding. The riparianists have always favored such a measure, and their Sacramento organ advocates it. Somewhat more than six years have elapsed since the office of State Engineer was created to accomplish the same object which it is now proposed to effect through a Water Commission. A vast amount of valuable information has been collected by Mr. Hall, a portion of which has been published and distributed, and the balance in unpublished form, has long been open to the in-

spection of inquiring legislators and others. Only the negligent or wilfully ignorant can plead want of information upon the subject.

It may be admitted that the irrigation problem in its entirety is intricate. It is not unlike all other questions of magnitude, involving large detail. No original legislation is ever expected to be without a flaw. The most that can be done is to make a beginning, from which, with the aid of practical experience, may be moulded a system which shall in the course of time become suited to all wants and adapted to every necessity.

The whole State favors an irrigation law which places all land upon an equal footing, regardless of its situation. The dissenters are an attenuated fraction of riparian owners who have not availed themselves of the right of appropriation. The nature of most of our streams is such that even a small quantity of water cannot be diverted without sensibly affecting the flow at some point on the stream. No half-measure can avail irrigation. The utter and complete repudiation of the English common law, so far as it affects this subject, affords the only avenue of escape from a total collapse of irrigation throughout the length and breadth of the State. Localities in which irrigation is not a natural want, will not be injuriously affected.

Such of the riparian owners as oppose this course, shelter themselves under the protecting shadow of our Constitution, which ordains that "no person shall be deprived of life, liberty or property without due process of law," and that "private property shall not be taken without just compensation." They should not be denied the benefit of every syllable of these constitutional bulwarks of property. But there is another provision of the Constitution which the sovereign people of the State have made the law of the land: that the use of water for sale, rental or distribution is "a public use," and it is this provision which, while according the riparian owner the benefit of the guarantee to his property rights, makes it possible to remove him from the path of State progress upon just compensation, by due process of law. Six years of investigation by the State Engineer, together with the knowledge and experience of those who have given irrigation years of practical study, is enough to make a beginning upon. In the Wigginton bill there is safety to irrigation and constitutional protection to the riparian owner. In the district bill there is opportunity for experiment without risk of injury to the irrigator. There are other measures equally important and necessary. After their passage it may be well to yoke the State Engineer with a Commission, or constitute a separate Commission, and endow them with perpetual succession; otherwise they will come to the Legislature every two years for an extension of time.

By McClure's "compromise" the riparianists get the kernel and the irrigators the shell. In a contest where one side asserts that nothing shall be done without its consent, and refuses to consent to any action whatever, there is no such word as compromise.

San Francisco Alta.

Riparian Dogs-in-the-Manger.

The small band of cattle-owners who are, in the main, owners of great tracts of pestilential fever-breeding swamps in the Tulare Valley and elsewhere, having failed to "convince" the Legislature that southern California should be destroyed, are now at it tooth and nail in a last desperate effort to overcome the will of the majority in both Senate and Assembly by dilatory tactics.

Filibustering against the Irrigation bills is the order of the day with the minority. Powerless to defeat the desire of the people, by specious arguments to their faithful representatives, the riparianists now hope to talk the bills to death, or obstruct their consideration by proposing other unsatisfactory measures.

Since a riparian owner could not use water for irrigating his own lands, by mere force of his riparian right it might reasonably be supposed that he would favor a law of appropriation by which he, equally with all others, could divert the streams from their channels. But no! he claims that it is his vested right to have the stream pursue its wonted course, and he must be compensated for being deprived of that right. The new Constitution has furnished means enabling the Legislature to provide for such compensation by the first clause of Section 1, Article XIV, which is this: "The use of all water now appropriated, or that may be hereafter appropriated, for sale, rental or distribution, is hereby declared to be a public use and subject to regulation and control of the State in the manner to be described by law."

It is under this constitutional declaration the the use of water is public, that the Wigginton Irrigation bill and the Irrigation District bill propose to permit the condemnation under the law of eminent domain. Each of these bills authorizes the purchase from the riparian owner, of water which he does not and cannot either use or sell, upon making just compensation. To the fair minded man, it seems that if there is any injustice or any wrong in this, it is not to the riparian owner.

The riparianist having first said that it is unconstitutional to take the water unless by paying for it, now claims that it is unconstitutional to take it and pay him in the face of the constitutional provision just quoted. Nothing will satisfy him. The majority should take the reins in their own hands, and not suffer the obstructionists to kill the bills just on the eve of success.

San Francisco Call.

Riparian Rights.

Senator Cross said in a debate on the irrigation bills that the only thing this Legislature can do in regard to irrigation is to repeal the riparian doctrine so far as it relates to lands patented by the United States hereafter;

that under the laws of the nation no riparian proprietor can be deprived of his rights. The Nevada County Senator assumes in effect that the ownership of the water running through a tract of land has become a vested right of which no citizen can be deprived. This position is based on the ground that in the absence of statute the English common law governs in the matter. The effect of this position is that a man who has perfected a title to a tract of land through which happens to pass a stream of water large enough to supply a city or irrigate a county can effectively object to the diversion of a portion of that stream from its natural channel. If this doctrine had been in force thirty years ago the county which Mr. Cross so ably represents in the Senate would have retained its treasures of gold until the present time. Comparatively little of its mining was done by the aid of water in its natural channel. Early in the fifties a water company diverted water from its natural channel wherever it could be found and conveyed it by flume and ditch to the gold-bearing hills of Nevada County. The use of the water so diverted made Nevada at an early period in the history of the State one of the most noted mining counties. The plea of vested rights can hardly be set up as an assumption. California has necessarily nothing to do with the common law of England. The conditions which determine the equities in the use of water are quite different in the two countries. A person purchasing land in California upon the assumption that English common law would govern the use of water does so at his own risk. A positive statute might at any time set the common law aside. The dominant consideration in the determination of this water question is the greatest good to the greatest number. The State has a right to make any laws to govern the use of water which it deems to the greatest benefit of its citizens as a body. The individual rights which the law must respect are the rights acquired under law. It is monstrous to assume that a person on the strength of holding a tract of land should possess the right to withhold from a large body of people an essential of their existence. The law would confer no such right in a country where such abuse could be made of it. The common law of England was the result of centuries of observation and practice, and was adapted to the conditions prevailing in that country. The conditions prevailing in this country, if prevailing at the time in that, would have prevented any such system of laws to govern the use of water.

Sacramento Record-Union.

The Irrigation Contest.

The people are agreed upon the need for an irrigation system, and are all of one mind concerning the use, for irrigation, of all waters that can be diverted to that purpose, consistently with the best interests of the State and all its citizens. When we come to methods, it is discovered to be the most difficult problem for solution that has yet presented. But we have faith that it will be solved. The future of the valleys needing irrigation, under a wise system of use of the waters, will be one of the greatest possi-

bilities, wealth and prosperity. Where we now have hundreds of homes, we shall have thousands; where we now have one consumer, we shall have fifty or a hundred. Every interest, commercial and industrial, will be advanced, and all the people will be benefited. But not even this glowing future can be realized at the expense of the destruction of the navigable streams. They are necessary for commercial uses and sanitation; they secure to the interior commercial advantages not otherwise obtainable; they cheapen transportation; they build up trade; they are free highways, the heritage of all the people. Let our friends the irrigators, who declare that they do not propose or wish to take as much as a thimblefull of water from the Sacramento River to the impairment of navigation, affirmatively express in their bill that nothing in the irrigation legislation shall be construed as the exercise of sovereignty to the injury of navigable streams, and they will have won to their position whatever of influence may have heretofore been timid about pronouncing for them on this account.

Stockton Independent.

What Irrigation would do.

An exchange remarks that there are five million acres of land in the Sacramento and San Joaquin valleys susceptible of irrigation by a well-planned system of canals. The same paper goes on to say that "if these lands were so irrigated they would produce from fifty dollars to three hundred dollars an acre annually each, but say one hundred dollars, averaging between alfalfa and grapes, this would give a yearly product of five hundred million dollars." This is not an extravagant estimate. But the land must be irrigated in order to be made productive. California is capable, or rather could be rendered capable, of supporting a much larger population than that of the entire New England States, but in order to make that possible, our industrial system must undergo a very radical change. Irrigation would not only make the cultivation of green crops possible but profitable, and the culture of such crops would, as a matter of course, increase the demand for agricultural laborers. It is commonly admitted that a well regulated system of irrigation must be established before the agricultural resources of the State can be fairly developed.

The Oakland Daily Times.

The irrigation legislation which is pending at Sacramento, is of intense interest to the arid sections of the State, and it should become a law.

Los Angeles Express.

The struggle now in progress in both branches of the Legislature upon the subject of water rights is one of immense importance. It constitutes an

attempt to legally define the rights of riparian owners, and owners by appropriation—to draw the precise line between the two, showing where the one commences and the other ends. The riparian owners claim the right to all the water in the streams running through or in front of their lands. The owners by appropriation claim the right to divert water from the running streams to irrigate lands back of the streams, and not bordering upon them. As the number of people who are served by appropriation is many times as great as that of the riparians, and as the principle of appropriation is manifestly the principle of “the greatest good to the greatest number,” and is the principle upon which vast sections of the State have been redeemed from a wilderness to a garden of beauty and luxuriance, it is the one which ought to prevail. The people will be represented in this Legislative fight by those who advocate the idea of appropriation; the riparians will be represented by their money. It will probably be found that the strength of the latter will be found mainly in the city of San Francisco, whose members are but little affected in the matter one way or the other.

The Visalia Weekly Delta.

Irrigation.

The Sacramento *Capital*, which still continues to work manfully in the interest of irrigation, referring to work in the committees, says:

“The Irrigation Committee men have been hard at work all the week, but it is very much feared that the riparian men have captured the Legislature, as it is a fact that they are spending a great deal of money to defeat the most important measure that has come before the body during this session. It is a well known fact that the appropriators have but little or no money to spend on the fight, as they represent the bone and vim of the southern part of the State, while the large landholders are backed by some of the wealthiest corporations in the State. If the bill does not pass, the people may rest assured that money defeated it.”

We are not ready to believe that a majority of both houses have fallen into the hands of those who have combined to defeat the bills, when so great an effort is being made to set the matter before the Legislature in its true light. The question has been so thoroughly discussed of late and so much information regarding it has been placed in the hands of members of both houses, that we are still hopeful of good being accomplished.

Fresno Expositor.

Colossal Misstatements.

Last Wednesday evening the “riparianists” and their attorneys appeared before the Joint Irrigation Committee of the Senate and Assembly, and, if the *Examiner* reports them correctly, they made some very gross misstate-

ments. Senator Cox, of Sacramento, however, loomed up as the colossus of the occasion, and made for himself a record worthy of Eli Perkins, Tom Ochiltree, or Annanias of old. He is reported by the *Examiner* as saying that "he was one of those owning 190,000 acres of land on King's river, and because of a diversion of the water above this land last year, he lost 5,000 head of cattle, and Miller & Lux lost 10,000 head." The statement is absolutely false. We do not believe that Senator Cox had 5,000 head of cattle dependent on King's river for water, and we know that Miller & Lux did not have any that were so dependant. Cox & Clark drove all their cattle out of Tulare and Fresno counties after the passage of the no fence laws, while Miller & Lux have their cattle on their ranches on Kern Island and the San Joaquin. More, neither of these parties lost a single animal last year because the waters of King's River were diverted. Water ran in the river the entire season, and the swamps were overflowed much of the season. But, admitting that all the water had been turned out of the river, and there was a scarcity in consequence, what must the Legislative Committee think of men who would let fifteen thousand head of cattle perish with thirst when a few hundred dollars would have bored wells from which an abundance of water could be obtained. The cause of the riparianists must indeed be weak when it has to be bolstered up by such absurdities. This riparian struggle is the dying kick of the cattle kings.

The facts are, and it can be shown to the world, that nine-tenths of the owners of land along the King's and San Joaquin rivers are in favor of the appropriation of water for irrigation.

The Sacramento *Bee* has taken the side of the riparianists in the present contest before the Legislature, and is working with might and main to prevent just laws from being enacted. Whether it will have any influence or not, we cannot say, but certainly in a course so unholy its efforts should fall flat. The people of southern California and the San Joaquin and Sacramento Valleys must have laws passed that will protect them in their rights, and stop the hampering of the riparianists; and right here I will say that any member of the Legislature who fails to stand up square on this vital issue will be marked, and few and far between will be the votes he will get in the southern counties should he ever come before the people asking for office.

Fresno Republican.

Slow to Grasp It.

Never before in the history of our newspaper experience have we felt so entirely powerless to do justice to a subject as we feel in the presence of the great irrigation problem in California. We have thought of it much, and have given it all the investigation that opportunity afforded, but as we progress, "hills peep o'er hills and Alps on Alps arise." There are only about a million of people in California now, but when we have added a million to our irrigated or irrigable districts, a commencement will only have begun!

We have blamed the men in charge of the big newspapers of the State for not having grasped the situation; for devoting page after page, telling how Miss Smith, who visited Mrs. Jones, was dressed, and begrudging the occasional eighth column notice of some grand irrigation system; but it is so grand, so magnificent in its proportions, as to deter the ordinary thinker from approaching it at all.—*Colusa Sun*.

The *Republican* has not so much wondered that the country press of the State in localities where irrigation is an undemonstrated possibility, has been slow in realizing its importance to the State, for the first and principal duty of the local journal is to look after the interests of its own county and community, and in many cases the country journalist has not the opportunity to learn by observation, and comparison of his own with other localities, what is most needed to advance and develop the resources that may exist; but during the several years past that irrigation has been a demonstrated success in several portions of California, the lack of interest manifested by the metropolitan press has been a constant source of surprise to us, and this feeling has been shared by the people of all the irrigated portions of the State and all others who have observed the results of irrigation. All the encouragements given to irrigation by the daily papers has been exceeded by the attention they have devoted to other subjects of not one-hundredth part the importance. Although it has been for a number of years past shown beyond all question in the irrigated districts of Fresno, Riverside and those of lesser importance, that by the use of water for irrigation, many of the vast and comparatively unproductive valleys of California can be made perfect garden spots, marvelously productive of fruit, wine, raisins and all agricultural products, and capable of supporting a population of millions instead of hundreds as now, when the irrigators of the State have gone before the Legislature asking that the laws be so amended that they will encourage and not prohibit irrigation, the leading papers of the Coast have either been non-committal or given the cause of irrigation a very conservative support.

It is amazing that among the prominent metropolitan journalists of this coast, with all their facilities for gathering facts concerning the existing conditions, there has not been one possessed of the necessary comprehension to discover that irrigation is to be the paramount factor in the development of this State from its present uncertain and unsatisfactory system of agriculture to one of the richest and most densely populated agricultural regions of the world.

Very recently, since the session of the State Irrigation Convention at Fresno, some of these papers, notably the *Alta*, *Chronicle* and *Post*, seem to have partially awakened to a sense of the gravity and importance of the question. Whether they have come to a sufficient realization of its importance to use their influence in securing the necessary legislation at the approaching session of the Legislature, remains to be seen. We are inclined to believe they will, for public sentiment has been so educated in regard to this matter without the assistance of the press, that we believe that power will now find it necessary to champion the long neglected cause of irrigation.

The necessity of legislation must be apparent to all. Under the ruling of the Courts, the present law prohibits irrigation, and would not only raise an impassable barrier to the reclamation of thousands of acres from their present condition of barrenness or unprofitable cultivation to the highest possible state of productiveness, but would destroy all that has been accomplished in building up the most prosperous, densely populated and altogether most desirable portions of the State of California.

Los Angeles Daily Herald.

So far the irrigation bill has made good progress in the Assembly. It will be remembered by readers of the *Herald* that two bills of this kind had been introduced, but the one now referred to is that which was prepared by the Fresno Convention. On the introduction of this bill, the great advantages it possesses over the others were so manifest, that it was determined to let these two lie on the table. One of the main features of the bill is the doctrine that the common law of England and the United States concerning riparian rights should not be applicable in this State, and common sense would lead one giving sane attention to the matter to the same conclusion. On Thursday last, and again on Friday, Assemblyman Walrath moved that the bill, which had been reported on favorably by the committee, be taken up out of order and read for the first time. His second motion was carried, and the bill was made a special order for to-day. The proceedings of the State Irrigation Convention held at Fresno, which were reported at the time in these columns, are so well known to the readers of this journal, that it is not necessary now to do more than refer to them. That Convention was composed not of mere theorists, as some of those who went as delegates to the Riverside Convention were, but in the main of gentlemen who discussed the question from a standpoint they have taken after many years of thorough practical acquaintance with irrigation in California, and what it can and should be made. Just as the meteorological phenomena of California, its climate and its various soils differ from those of other lands where irrigation is practiced, just so the law of riparian rights of other countries may very well be inapplicable to our State. At Fresno the subject received full consideration, and it is very reasonable to suppose that the bill under discussion as these lines are being written will become a law.

San Francisco Examiner.

A Burning Question.

One of the objects of the proposed legislation upon the subject of irrigation is to establish the doctrine that the water of streams can be used for the purpose of irrigation. The "riparianists," so called, claim the right to have the waters of natural streams flow in their natural channels without diminution.

The irrigators, or appropriators, assert that the first who appropriates and applies water from a stream to a useful purpose, has the better right.

The former class is composed, chiefly, of a few cattle-raisers, who pretend that the waters of natural streams should be devoted to watering cattle, and that what is not so used should flow untouched to the sea.

The irrigators comprise the thousands of people, many of them with families, who, learning of the great fertility of the soil of Southern California, and of the marvelous variety of products which will flourish there by means of irrigation, have purchased lands, constructed ditches and canals, and appropriated the waters of streams for irrigation purposes; also other thousands who have followed the increase of population with the various business enterprises and employments necessary to the existence of civilized communities.

Passing by the legal propositions involved, among the questions to determine are: What are the relative necessities of the people of that section? To whom will the greatest benefit inure, or evil result, by the giving to the people the right to irrigate their lands?

On the one hand, if the farmers and fruit-raisers of the San Joaquin Valley and the southern portion of the State are to be deprived of the privilege of diverting water for irrigation, their property becomes valueless. Crops cannot be raised nor fruit cultivated there without irrigation. All of the land now cultivated must be abandoned.

Valuable products, which might have been raised in immense quantities, will never enrich the State. The vineyards and orchards will perish of thirst. The parched lands will no longer exchange its fruits for water. The property which has hitherto added so largely to the wealth of the State and the prosperity of this city will no longer exist. The populous towns which have been built along the line of the railroad, in the center of thriving communities of farmers, will become "deserted villages."

The well-to-do will become poor, and the poor, paupers.

But the roving cattle-owner will water his cattle in the streams. The fortunate owner of land upon the banks of natural water-courses will be enabled to obtain river water with which to wash his dishes, and indulge in the pleasure of gazing upon the waters rushing to the ocean through millions of acres of desert and wilderness, which need but irrigation to smile into gardens, vineyards and orchards, bringing forth every known variety of flowers, fruits and grains.

On the other hand, if the right of diversion of water for irrigation be given to those who have heretofore appropriated, and to such as may hereafter desire to appropriate it, the labor and industry of years will be saved to those who have well earned the right, and the millions of acres yet unoccupied and unimproved will be taken up, irrigated, and made fruitful by hundreds of thousands, even millions yet to come.

And, compared to the injury sustained from want of water by the farmers and others directly and indirectly interested in irrigation, the loss to cattle-

owners from the abolition of the riparian doctrine would be trivial and easily compensated.

The entire basin of the San Joaquin Valley carries water near the surface. Wells can be sunk at slight expense almost anywhere, through which good water for cattle can be obtained at a depth of from ten to thirty feet.

The expense of pumping enough water for thousands of cattle through a single well is insignificant. Good flows from artesian wells can be obtained at depths varying from three hundred to six hundred feet. There are twenty such wells now flowing in Kern county, and numbers in Tulare and Fresno counties.

Well water is much purer and more healthful for cattle. Less disease is found among cattle watered from wells, and well water is used everywhere in preference to river water.

Indeed, it would perhaps be an advisable sanitary measure, and for the good of consumers, as well as cattle-raisers, if it were made compulsory by law to water cattle with well instead of river water. The warm, unhealthy and frequently stagnant water of rivers and streams is a well-known cause of the fevers from which so many cattle die in the San Joaquin Valley. It is not the lack of water, but its quality, which sickens and kills them in such numbers. These facts show that riparianism means disaster and depopulation to the southern half of the State, and brings no substantial benefit to the cattle-owner or riparianist. Every business man should take an especial interest in this great question, and join actively in giving aid and comfort to the efforts now being made before the Legislature to strengthen the rights of the people who are irrigating their lands. The necessity for immediate remedy is pressing.

Nevada Transcript.

The Irrigation Question.

The Speaker of the Assembly did a good thing when he appointed Walrath Chairman of the Irrigation Committee, because he secured an able and intelligent man for the performance of the most important duty. Any one who has noticed the conflict going on between the men who claim to have the water of any stream passing the property flow on to the ocean unmolested and undiverted, and those who claim the right to divert the streams of the State upon the arid plains, will appreciate the importance of the Irrigation Committee, which is to report a policy, if possible, consistent with private rights and the interests of the State.

In the mountains, at an early day, the miners rejected the doctrine of "riparian rights," as unadapted to their wants and circumstances, and the Courts of the State sustained them, the common law of England to the contrary notwithstanding. The diversion of water was a necessity, and the necessity prevailed over legal refinements. The rapid development of gold production evinced the wisdom of disregarding the common law, which

would have confined the waters of the mountains to the canyons instead of allowing their distribution to the numerous places where they were needed. Had Judge Murray been as hidebound in the olden time as Judge Sharpstein now is, the gold would have remained in the foothills, and the water run waste to the sea. But that eminent jurist saw that the rule ceased with the cessation of the reason for it; that new conditions required new treatment, and he gave full effect to the policy of the appropriation and diversion of water.

In the whole south of the State, and much of the middle portion, a similar question is now pending. It has been found by experiment that the arid plains can be made fabulously productive by water. Large communities have grown up, supported by the agricultural products of a region heretofore sterile. Thousands of people find profitable employment on irrigated land. Water is the great civilizer. Its magic touch causes the desert to bloom like the rose. Withdraw the water and the bloom fades, the fertility changes at once to sterility, the ashes of desolation cover again the rescued domains. A more deadly stab at the general prosperity of the State could not be inflicted.

Why should not a system that has redeemed so much of the State from barrenness be continued and extended, as it may be infinitely? Judge Sharpstein and three other judges answer: "Because in England a man has a right to have the waters flowing by his land continue to flow there that he may water his cattle." But England is a wet country, with a minimum of thirty inches rainfall. California is a dry country, and the San Joaquin and Tulare valleys have a maximum of four inches rainfall, and other parts of the State have varying degrees of aridity. To the mind of a layman it is not obvious what English customs have to do with the matter. But it would seem that the body of the common law was not intended to apply where its application is incongruous; where the conditions are so different that the interests involved are injured rather than fostered. So Judge Murray held; and so it has been held in Colorado, upon this very irrigation question, viz: that the policy of the State is opposed to the common law rule, and that the riparian proprietor who makes no beneficial use of flowing water by his land has no right to complain of one who diverts the water to useful purposes. We need the doctrine in California.

San Francisco Chronicle.

The Irrigation Business.

It will take more statesmanship than has yet been manifest at Sacramento to accomplish anything for agriculture in Southern California. The bull should be taken by the horns and men forced to vote for or against some one set of measures, with the clear understanding that their votes will hereafter class them either as enemies or as friends of irrigation. It is impossible to draw bills which shall please everybody. To accomplish results for the gen-

eral good, individual predilections must be made to give away. Gentlemen must remember that they have three enemies to fight. First, the riparian owners object to interference with their dog-in-the-manger business. Next, the promoters of such schemes as the plan for securing payment of the drainage claims will log-roll to make the passage of irrigation measures contingent upon the success of their projects. And finally, the great landowners of the south, who thoroughly understand that if things are allowed to drift along as they are doing for a few years more they will acquire a monopoly of water in the southern portions of the State, are insidiously throwing obstacles in the way of legislation. These three classes of enemies are not to be despised. They may be expected to appear in the disguise of friends of irrigation. They will do everything that can be done to kill all bills, except to put themselves squarely on record against irrigation.

That is precisely the ground upon which the irrigators should force them. Few members will dare to put themselves on record as men who postponed for two years the development of Southern California. Compel them to do so, or to vote with the true men. And remember that there only remain twenty-three working days for the Legislature of 1885.

San Francisco Alta.

Pass the Bill.

The entire press has for months voiced the demand of the people for the enactment of irrigation laws. The subject has been universally discussed in all its phases. The necessity and wisdom of a broad public policy in behalf of irrigation is generally conceded. The bills prepared with a view to an equitable settlement of the question have been widely published and circulated. There is no excuse for a member of the Legislature being ignorant of their contents. Those who have investigated the facts and the law comprehensively and thoroughly, are convinced that irrigation cannot survive the adoption of English riparian law. At the same time they have recognized as a factor in the water problem, the possibility that there are existing vested riparian rights heretofore acquired by virtue of the common law. It has been found that this common-law right confers no privilege upon the riparian owner to use water for the irrigation of his land nor to sell to another such a privilege. The water is locked within the river banks by common law. The obvious remedy for such a state of affairs seems to be a legislative declaration that the common law of riparian rights shall not govern this State, at the same time providing means for the taking of water for irrigation, and compensating for injury resulting to any person by reason of such taking. One of the bills now claiming the attention of the Legislature was framed to embody these ideas. It has the merit of brevity and directness. Under the operation of its simple provisions irrigation can be practiced in the State. If it becomes a law the riparian owner, to whom the common law forbids irrigation, may appropriate water and irrigate his lands, upon properly compen-

sating any one who may suffer injury. It is astounding that a member of the Legislature, representing a large and populous county, had the hardihood to inform his constituency, from the floor of the Assembly, that he had not read the bill. If any other member has not had the time to read this bill, he had best hasten to do so, for he will there find expressed the wish of the people.

San Francisco Post.

The Legislature has but twenty-one days yet to serve, and it is not likely to accomplish much beyond passing the appropriation bills. Perhaps, taking it all in all, this may be taken as a matter for congratulation rather than regret. There are many vicious bills pending before it, and few that there is any pressing necessity for passing. The irrigation bill is the most important one pending, and it should receive the first attention in the short time yet remaining.

Daily Humboldt Standard.

Irrigation.

In Humboldt we are not interested in the subject of irrigation. The humid atmosphere relieves us from the necessity of devising artificial means of procuring water for the fields. But the question of irrigation is agitating a large portion of the people of the State, is puzzling the Legislature, and has presented its intricate problems to the courts. The riparian owners, that is, those who own the land through which the water flows, are unwilling that the flow shall be diminished by any person appropriating it for the purposes of irrigation at a point further up the stream. Such men have bought land at an increased price on account of its contiguity to bodies of water, and a diminution of the water depreciates the value of the property. On the other hand, there are thousands of acres of parched and barren plains which, by irrigation, might be made to bloom and give homes to thousands of families. The owners of these unprofitable wastes are asking for a general distribution of the—what has been called God's free gift to man—water. Out of the conflicting demands of these two classes, the Legislature is endeavoring to frame some law that will meet the equities of the case. Probably nothing can be accomplished at this session of the Legislature, but the question is of paramount importance, and will continually come up until it is definitely settled. In the end, private interests of the riparian owners must be made subservient to the general good. Better that a large portion of the people should prosper than that a few should be allowed to selfishly deprive them of every opportunity. But, in the stimulated prosperity which would result from irrigation, even the riparian owners would reap an advantage in the increase of values.

San Luis Obispo Tribune.
Riparian and Irrigation.

One of the chief questions agitating the California Legislature, is that of the use of the water of the mountain streams. The question is between riparian owners and irrigators. The owners of land bordering the rivers object to the diversion of the water, and the owners of land on the dry plains object to the water going to waste in evaporation, or sinking in the beds of streams, or lost in the ocean. The early laws and customs of California permitted the diversion of streams, the water being designed for mining purposes, and taken along the high ridges in ditches, flumes and canals. The water can be used for mining, manufactures and irrigating. These privileges have become vested rights, and recognized as such by the Commissioner of the General Land Office, and by the Federal and State Courts. The system has worked well in the past, appears to be just, and we think should be continued, as the only system adapted to the climate and topography of California. The common law of England confines the use of waters of streams to those owning the banks, and that law has been adopted in this State when not inconsistent with the laws and Constitution. As that part of the common law is inconsistent with the best interests of the State, and as customs and decisions have changed the rule, the question should be considered settled. To forbid the diversion of the waters in the canyons of the Sierra Nevada on the claims of the riparian owners, would be an absurdity.

The Merced Express.
Irrigation.

The Legislature, which convenes next Monday week, will no doubt be called upon to give considerable attention to the question of irrigation and riparian rights. The law as it now stands is very complicated and perplexing, if the courts decide in favor of the riparianist—which they are inclined to do. It will be a blow to irrigation, and kill any method of irrigation that is now successfully in use. Under the existing laws the riparianists have some rights which the courts feel in duty bound to recognize, but these laws should be so modified as to favor irrigation; for, without a thorough system of irrigation, our valley lands are to a certain extent worthless. If the time is not at hand now, it will come soon when these riparian rights must be surrendered to irrigation, as it will be for the public good. We must have a system of irrigation, and the sooner these riparian rights are relinquished the better it will be for the whole State.

San Francisco Post.
Mark Where He Stands.

When old burdens have grown past endurance, or new evils have threatened the welfare of the people, the Republican party has never failed to be foremost in finding and applying the remedy.

The body politic is now sorely afflicted with a disease called "riparianism." The germ of the disease was brought into the State with the common law of England. It was supposed until lately that after treatment for a generation by our doctors of the law, the affliction had been eradicated from our political system, never to re-appear. But the present Supreme Court has brought it to the surface, and now the malady has taken such form that nothing short of radical treatment will be efficacious.

The diagnosis of the case in a nutshell is this: When we organized as one of the federal union, we adopted the common law as the general system which should be the rule of decision in our courts. The people began the development of the two great industries of the State, mining and farming. They early found that mines and farms in many portions of the State must be located more or less remote from the streams. Water was a necessity for both, and not being able to move either farm or mine to the stream, the water was taken out in ditches and canals to wash the gold-bearing earth and irrigate the fertile soil. It never occurred to the hardy miner or the toiling farmer to send over to England for a copy of 1 Sim. and Stuart, where he would have found in the case of Wright vs. Howard, the language of Sir John Leach: "*Aqua currit et debet currere ut currere solebat,*" the riparian law of England. As time passed, farms and farmers multiplied. The farmers trod the path of those before them, and diverted the waters of streams for irrigation wherever necessary. No one needs to be told to what magnitude the irrigation interests have grown. It is enough to say that nearly every man, woman and child in the State is more or less interested in irrigation directly or indirectly. However, after irrigating for thirty-five years, the farmers awoke one day to the fact that the Supreme Court, which they had helped to choose, had procured a copy of 1 Sim. and Stuart, and translated the Latin of the common law, and that the plain English of it is that irrigation is against the law, and the irrigator is a wrongdoer.

Then the farmers went to the Legislature and prayed that it be made lawful for them to irrigate, as they have been irrigating ever since the State was born. They found in that Legislature an Assembly overwhelmingly Republican, and a Senate equally divided between the two parties, but controlled politically by the casting vote of a Democratic Lieutenant-Governor. A bill known in the Assembly as Bill No. 410, and in the Senate as Bill No. 210, was introduced in both houses, intended to legalize irrigation, and to provide that water ought to flow where it will do the most good. The Republican Assembly, having the good of the people at heart, has passed the bill with only a corporal's guard against it. The Senate is still talking over it. The farmers think that one vote is better than fifty speeches. If the bill fails in the Senate, it is to be hoped that the defeat will not be due to the vote or filibustering of any Republican. The party will suffer greatly by it. No Republican Senator can contribute to its defeat without injury to himself and the party. We give below a list of the friends and foes of the people in the Assembly:

For irrigation—Ash, Banbury, Barnes, Barnett, Buhlert, Carter of Contra Costa, Clark, Cook, Corcoran, Daley, Deveney, DeWitt, Dooling, Franklin, French, Goucher, Gregory, Hazard, Henley, Hunt, Hussey, Johnson, Kalben, Lafferty, Long, Loud, Lovell, May, McDonald, McGlashan, McMurray, Mears, Moffat, Munday, Patterson, Pellet, Pyle, Reeves, Roseberry, Russ, Sullivan, Swayne, Torrey, Van Voorhies, Watson of El Dorado, Ward of San Francisco, Weaver, Woodward, Yule and Parks—50.

Against irrigation—Allen, Colby, Coleman, Davis, Ellison, Firebaugh, Jordan, Heath, Henry, Heywood, Hollister, Jones, McJunkin, Walrath, Watson of Alameda, Ward of Butte and Wood—17.

A similar list will be given of the Senate when the roll-call is taken, in order that the people may know whom to reward as their faithful servants, and whom to consign to political graves.

S. F. Bulletin.

An Appeal to the Business Men and Property-Owners of San Francisco. Another Disaster to Our Business Interests. Irrigation in California Virtually Prohibited by Law. What Should be Done—Immediate Action Necessary.

EDITOR BULLETIN: The business community of San Francisco (as is well known) has within a few months experienced a loss of trade consequent upon the opening of the Northern and Southern Pacific Railways. Thrown back upon our immediate neighborhood for a market for our goods, we have indulged the hope that having in the State of California a large extent of territory of varied resources and wonderful fertility, we might, by attracting immigration to our shores, create a trade very much greater than that we have lost. Those who are familiar with the peculiar climatic conditions of a very large portion of the State, know that such a result is impossible of attainment without a sound system of irrigation. The subject of irrigation in California is one of the most important that can engage the attention of the business men and property-owners of this city. The practice of irrigation on a large scale means small farms producing high-priced commodities, a prosperous and dense population where now only the wheat-grower and stock-raiser are to be found, and a market for our merchants at our very doors, that may be developed into enormous proportions, and that never can be taken from us.

The great value of irrigation as a means of producing wealth is but little understood by most people, but is soon recognized by all who give any thought to the subject. The history of irrigation is as old as the history of the world, and forms an important part of it, in ancient as well as in modern times, in all countries where the climate is similar to that of California. The richest portions of Italy and Spain to-day are those supplied, through the wisdom and financial aid of their Governments, with a thorough system of irrigation. Those districts support a dense population, and the enor-

mous valuation given to them by irrigation is shown in the prices at which agricultural lands are sold at there—ranging from \$500 to \$3,000 per acre. The value of the annual overflow of the Nile in Egypt (which is the crudest form of irrigation) is well known, and in China and India more than half the population of those countries would die of starvation if deprived of their facilities for irrigation. In the latter country the English Government has expended in the last thirty years millions of pounds sterling in the construction of irrigating canals and reservoirs. An element of wealth which has been recognized in all ages and by all progressive peoples as of such paramount value, surely ought not to be overlooked by us in these days.

In our own State we have an abundant evidence of the enriching effects of the use of the water in irrigation. In Los Angeles and San Barnadino counties many instances may be found where lands that ten years ago were used as sheep ranges, and were worth but \$5 per acre, have since then been supplied with water for irrigation and planted with fruit trees and grapevines, and have been sold at \$500 to \$1,000 per acre. Even the lands left unimproved, except by facilities for irrigation, sell readily in some districts at from \$200 to \$500 per acre. The reason why these properties bring such prices is because they produce crops which pay a good interest on several thousand dollars an acre. Without irrigation, there can be no doubt whatever that owing to periodical dry years, these same properties would return to their former valuation.

RAPID SETTLEMENT OF SOUTHERN CALIFORNIA.

As a result of this wise use of the waters of our streams that portion of our State is settling up very rapidly. The population of Los Angeles county has increased from 34,000 in 1880 to over 55,000 in 1884, and in the city of Los Angeles the increase has been from 11,000 in 1880 to 30,000 in 1884. In Fresno county many thousands of acres of what were once considered desert lands, have been, in the last four years, converted into colony tracts containing thousands of happy and contented families, each prospering in the cultivation of twenty acres of irrigated land. It is known that the Sacramento Valley has nearly (and that the San Joaquin Valley has quite) reached its ultimate capacity as a farming district, dependent upon rain, in its present area of wheat farms. Let those large wheat ranches in those great valleys be supplied with water for irrigation from the millions of cubic feet of water daily running to waste in the Sacramento and San Joaquin rivers and they would soon be cut up into small farms supporting millions of population where now there are only thousands.

Irrigation in California already represents a valuation of over fifty million dollars, and yet only a commencement has been made. In this connection, the following extract from the *Colusa Sun*, written by the editor, W. S. Green after a visit to the Fresno colonies, and speaking of the San Joaquin Valley, will give an idea of the future field opening up to our merchants through the agency of irrigation. He says: "Going over the country, one can see that

but a small beginning has been made. The possibilities of the future almost stagger the comprehension. When one looks at this vast valley, embracing more than one hundred thousand square miles, all capable of the same degree of productiveness, and contemplates it all so in cultivation, the feeling is akin to the contemplation of the vastness of space or an endless eternity. One hundred thousand square miles gives 1,600,000 forty-acre farms, and forty acres is larger than the average family will want! Each forty acres, cultivated as the land is now cultivated here, will give employment to five laborers, besides a family of say five. This gives a rural population of 16,000,000! Then what will the towns and cities be?"

The question is now asked, shall this development be encouraged and assisted, or shall it be stopped? There can be but one answer to that question by the people of San Francisco, who have so great and direct an interest in this matter. The issue is made and the order has gone forth that it shall stop. The Supreme Court of this State has recently rendered a decision which affirms and sets up the English doctrine of "riparian rights," and proclaims that doctrine to be the law in this State. Under that law all the wealth in water flowing from nature's great reservoirs, the snows of the Sierra Nevada, must be permitted to flow "undiminished in quantity and unimpaired in quality" to the sea. Nor has even the riparian claimant a right to take any part of that water from the stream for purposes of irrigation if a man owning a single acre on the stream below him objects. It is evident that such a law, if enforced, would prove disastrous to the best interests of this State. Take away the facilities for irrigation now existing (and that is what this decision has done), and such action when completed would utterly destroy many prosperous communities representing millions of property in Southern California; would wholly put a stop to further development, and would remand what is now fast becoming the richest and most prosperous portion of our State to the condition it was in twenty years ago—the grazing ground for cattle and sheep that die of starvation in dry years.

The law as interpreted by the Supreme Court must be obeyed. Thousands of our industrious farmers, who by the use of water are producing wealth for themselves and us, must shut off that water and let it run to waste, even if such action causes their ruin and drives them penniless from the State. Is there no remedy? Yes. These farmers are before the present Legislature asking that a law be passed without delay to enable them to use the State's right of eminent domain and condemn water rights and pay for them. This the riparian claimants oppose. In this emergency it is our imperative duty to come promptly to the assistance of the farmers and with our utmost power help them to have this and any other just and equitable laws passed which may be found necessary to save them from ruin.

The necessity for the passage of laws to promote and encourage irrigation in this State has been urged upon succeeding Legislatures for the past six years, but without avail. Our powerful "cattle lords," who have always been opposed to the development of this State by farming, have always ap-

peared at Sacramento in force on such occasions, and with "convincing" arguments have made it appear to the majority of the wisdom of those Legislatures that the golden flood of water from our mountains, that might be made to add thousands of millions to the wealth of California, should flow in its natural channels so that their long-horned cattle might be provided with water to drink. It has been suggested to them that a well and a pump could be made equally as effective in supplying their cattle with water, but their only reply is: "The law gives us the water in the streams." It is time the people awoke to a realization of this condition of things, and that they see to it that no more "convincing" arguments shall be allowed to perpetuate this gross outrage upon the individual interests of every citizen of the State except our "cattle lords."

It has been said in opposition to irrigation laws that there are many conflicting interests, and that the members of the Legislature did not and could not in the short time they had to consider the matter, understand the question, and that, therefore, a committee should be appointed to investigate the subject and report to the next Legislature. The same tactics are being followed out now and the correspondents of our newspapers say that there is every probability that again legislation will be defeated.

These reasons for delay are now utterly without force. State Engineer W. Hammond Hall, and a corps of assistants, have for nearly six years, at great expense to the State, been thoroughly investigating this matter. Mr. Hall has mastered this subject and has given us such minute and valuable information concerning irrigation in all its branches, that his report is sure to become the text-book of irrigation for the world. In addition to that, a convention of all interested in irrigation was held recently in Fresno. By this convention a committee of eighteen, composed of prominent citizens, having a practical knowledge of the subject, was appointed, who, with the valuable aid of Engineer Hall, have prepared a number of bills covering the subject of irrigation in California. These bills are now before the Legislature; the committee of eighteen from the Fresno Convention are now in Sacramento urging the passage of these bills, but there is too much reason to fear that the delegation in the Legislature from San Francisco understands the vital importance of these measures so little, or they are so indifferent to it, that through their votes, or neglect to vote, the passage of these bills will again be defeated and incalculable harm result before any remedy can be applied two years hence.

The unquestionable duty of every business man, and the owner of a foot of real estate in this city, at this time, is to make a personal matter of this subject and use all his influence, singly and jointly with others, to see that all our representatives in the Senate and Assembly vote in favor of the passage of bills which will foster irrigation in California, *and that these bills be passed at this session of the Legislature.*

M. T. K.

SAN FRANCISCO, Feb. 4, 1885.

Pacific Rural Press.

Irrigation Laws.

The Senate and Assembly are now devoting stated portions of their time, each day to irrigation subjects, but it is impossible to foresee the result. There is the most determined and organized opposition to the system embodied in the Fresno bills, and if they cannot be killed outright, as the opposition intends, there will be a strong effort to win some of those now holding with the irrigators by a compromise measure to appoint a commission to sit during the next two years, and report to the next Legislature; this move being advanced upon the plea that the present Legislature cannot inform itself fully enough during the few days remaining to demonstrate the truth in the opposing claims which are set up. It would be rather an expensive compromise, it is true, and we do not see that such a commission would enlighten the next Legislature, or that that coming body would be content to draw wisdom from such a source. It is a fact that the irrigation problem has been before the people for many years, and has been discussed in the public prints by public meetings, and in private conversation during all that time, and yet many men aspiring to the intelligence of legislators claim that they do not know anything about it. How will the next Legislature know more? How can we be sure that the next Legislature will not contain men who will not be ready to accept the testimony of the proposed commission, or men perhaps who will not know that such a body has an existence until they hear of it when they arrive at the State capital and irrigation bills are placed under their noses.

It seems to us that this Legislature is as well prepared as any Legislature is likely to be to take some action on this subject and to do something at least to advance the problem some degrees towards its solution, in such a way that the development of the State, which is now progressing so favorably, may not be checked.

San Joaquin Valley Argus.

The State Irrigation Convention.

By far, the most important meeting of citizens that has been held for years past in the San Joaquin valley, took place in Fresno, the first week in this month, resulting in a declaration of principles that we regard as sound in a business point of view, and strictly just and equitable to all parties concerned, and equally sound and just as legal propositions. The permanent prosperity and rapid development of the San Joaquin valley depends upon the utilizing of the waters flowing down the watersheds bounding the valley, and finding their way to the ocean through the many channels that are, in their natural condition, of little use for navigation, and as means of furnishing water supply for other purposes, answer such purposes to a limited extent only. The turning of the streams from their natural channels, by means of canals and ditches, and conveying the water over the high

lands so as to make it available for irrigating the soil is the only mode known by which relief can be economically afforded. The people who have settled upon farms on the great plains of the valley, and who, when prices for the principal staple ruled higher in the markets of the world than at the present time, were barely able to reap a living profit by the cultivation of their lands, and whose condition at the present time, when depression in prices render their condition desperate, makes the cultivation of a variety of crops imperative, if we hope to keep up with the progress of the times, even keep from retrograding in wealth and prosperity as a people.

The object of the convention was to adopt measures that would provide safety for investments in labor and capital in building canals and ditches, and bring about the inauguration of a system of constructing irrigation works that would be just to all interests in the State, and at the same time enable the people on the arid plains to have the use of the water at reasonable cost and in ways that will produce the best results to all the varied interests of the people.

With the legislation asked for, and united action by the people of the valley and foot-hill regions of the State, men of capital will be induced to make investments with fair prospects of profit. But where a few holders of lands along the lines of projected canals, who have bought the property with a view to gaining the greatest possible profit by reason of the irrigation facilities to be provided enhancing the value of lands affected, to unite and form stumbling blocks in the way of improvement, by making extravagant demands for right of way through their property, instead of giving accordingly as their lands may be enhanced in value by reason of being made available for irrigation. Such land-holders are purblind and often retard many needed improvements through their greed of gain, and yet accomplish nothing further than the deferring the day of general prosperity of themselves and neighbors. When such enterprises as the building of irrigation canals are conceived, the people, with united voice, invite the investment of capital; but, as a rule, no sooner than an association is organized under the incorporation laws of the State, than those who called the loudest and most persistently for the help of capital to aid them to obtain the means of cultivating their lands profitably, raise the cry of "Monopoly," and seek by every possible device to check progress and render the investments they had prayed for unprofitable. It is this kind of policy that has time and again retarded, and sometimes defeated, much needed improvements, to the great injury of the people immediately concerned.

San Francisco Alta.

Not a Party Question.

One cause of gratification to the people in the pending conflict between irrigation and riparianism in the Legislature is the entire absence of any effort to make any issue upon the subject between the political parties. The

great irrigation interests, inseparably interwoven with the powerful commercial interests of the city and State, include people of all shades of political opinion. They comprise the entire southern half of California, large portions of many northern counties, a great part of the commercial community of the city, together with the great body of the people who supported, in the new Constitution, the provision making the use of water a public use. No individual can afford to make this a party question, nor can any party. But while irrigation is not a party question, it is a political one. And it is political to the extent that it is destined to cut a leading figure at coming elections. The people of Southern California are at the present time expecting confidently that the majority in both Houses are about to yield to their prayers. The votes in each House have encouraged this confidence. Excluding the vote of Senator Cox, who admits himself to be directly and pecuniarily interested against irrigation, or counting his vote on the riparian side, the Republicans, if united, could control action upon the subject in either House; or the Democrats can, joined with a few riparianists in the Senate, effectually block legislation. These great interests before enumerated will exercise unmeasurable influence in the politics of the future. They are now observing, with watchful eyes, the course of parties as well as individuals. Common political prudence dictates that party leaders shall not interfere to draw party lines and make party warfare against the cause of irrigation.

Fresno Republican.

No Excuse for Delay.

The riparianists have already exposed their plan of action in the fight against irrigation legislation. A member from San Francisco fathers a bill providing for a commission to investigate the subject of irrigation for two years more. This is simply a transparent scheme for delay. The riparianists dare not meet the issue squarely upon its merits, hence the resort to the tactics of delay. In the early days of the agitation of this question there were some grounds for deferring action on this question for the purpose of investigation, but at this time there is no longer any excuse for delay.

The question of irrigation has been undergoing careful investigation by men competent for the important duty for several years, and especially for the two years last past. State Engineer Hall has been at work assiduously upon it, and has made a most thorough investigation. His report not only comprises a statement of the condition of the irrigation districts of the State, an accurate estimate of the natural water supply, the adaptability of different portions of the State to irrigation, but also an exhaustive history of irrigation in Egypt, Italy, Spain and Mexico. It embraces most of the essential information necessary for intelligent action in the matter. Whatever knowledge may be lacking from other reliable sources is furnished in the proceedings of the State Irrigation Convention recently assembled in Fresno. If there were

no other information available, the action of that important and representative body furnishes enough to show conclusively that further delay is the last thing that should be thought of. The vast interests now depending upon irrigation in California are confronted with a decision from the Supreme Court which denies their right to exist, and as the present law is so construed, the supreme necessity of an immediate change of that law must be evident to any sane and unprejudiced mind.

The litigation of this question of the right to use the water of natural streams for irrigation has already too long blocked the wheels of progress and prosperity in this State, and the people are looking to their representatives in this Legislature for relief that can only come from intelligent legislative action. The people have long and but too patiently struggled against the evils inflicted by the rulings of courts which recognize the supremacy of the old English common law, and now in behalf of the thousands of homes they have builded upon the desert made to blossom as the rose, of the millions of capital invested, and in behalf of the best material interests of the State, they ask the Legislature now assembled to take this burden from them and give them protection instead of destruction under the law. A postponement of the settlement of this question for two years longer is suicidal to the best interests of California. Should such a course be pursued it can only be attributed to the gross ignorance or venality of the Legislature. This question is the paramount one before the Legislature. That body must settle it in the interests of the people or suffer the disgrace of an ignominious and inexcusable failure to perform a plain duty. We believe the Legislature will perform its duty.

Record-Union.

A Shameful Story.

EDITORS RECORD-UNION: Under the above caption, the *Bee* of yesterday has the following:

"It is said that a corrupt combination has been made by the hydraulic miners and the supporters of the Fresno irrigation bills, by which each party to the bargain agrees to help the other's bill or bills through the Legislature. The hydraulic miners want the Cross dam bill passed, and the water appropriators are willing to co-operate if the hydraulicers will help the Fresno bills. This is a report which we hear on good authority. We trust, however, that it is not true. It would be an infamous bargain—a burning shame and disgrace to those agricultural communities in the southern part of the State, whose representatives should strike hands with the hydraulicers over the wicked bill introduced by Senator Cross. We warn the representatives of the irrigation interests that any such bargain must result in disaster. It is inconceivable that legislators elected from agricultural communities could support the Cross bill as the result of a bargain and sale."

Yes, this is a shameful story—so shameful that it is a shame that any newspaper could be found shameless enough to print it. I would ask for the *Bee's*

“good authority;” but as craven cowardice and mendacious falsehood always walk hand in hand, no man will step forward and say: “I originated the lie.”

Now, Messrs. Editors, I feel somewhat deeply on this subject, because I was all through the anti-slickens fight, and have been in the innermost councils of the irrigators since the 1st of December last. No man in this State spent more time and money in behalf of the valley interests, in proportion to means, than I; and being now in the full and complete confidence of the irrigators, such a story as the above amounts to a charge against me of treason and bad faith to the cause of the valley interests in opposition to hydraulic mining.

The *Bee* says that this would be an infamous bargain; that it would be a burning shame and disgrace for the representatives of agricultural communities to shake hands with the hydraulicers. And so it would be, but why? Because it would be for gain, giving over the lovely portion of the Sacramento Valley to destruction, to desolation. It would not otherwise be an infamous bargain, would it?

But let us cast our eyes in another direction. These representatives thus denounced and defamed represent a people made happy and prosperous by means of the diversion of water. The desert has been turned into vast orange groves, vineyards, orchards, meadows and grain fields; cities have been built up; the industry thus developed and the wealth thus created amounts to hundreds of millions of dollars: but a crisis comes when legislation must be had or all this must perish, and beggary and want come to tens of thousands of people, and California set back in the march of time a score or more of years. When the representatives of these people come asking for just and equitable legislation, asking for the preservation of their homes and their firesides, we find the representatives of Sacramento “filibustering” on the floor of the legislative halls against the passage of any measure for their relief, and one of the principal papers of the city denouncing them as lunatics, and giving credence and circulation to infamous falsehood. *What “bargain” brought about such actions as these?*

Even to save their homes the irrigators have made no bargains with the enemies of the valley interests; they would prefer to defend their rights with their own good strong arms, as the people of Mussel Slough once did, to such a bargain.

I am in this contest to stay, and am willing to register an oath to oppose, as long as I can wield a pen, any man for any office, who through corruption or stupidity opposes all legislation for the relief of these people. Mere party politics sink into utter insignificance alongside such a question as this. Men try to get out of responsibility in this matter by saying that it is too complicated, and they must have more time. The question is very simple, and he who confesses that he cannot understand it ought never to seek public office. It is: Shall the desert be a desert, or shall the desert be an earthly paradise? Twist it and turn it as you may, and that is all there is to it.

The *Bee* says it is inconceivable how legislators elected from agricultural counties could support the Cross bill without a bargain. It should have waited until they did so before denouncing them. But did it never strike the *Bee* that it was inconceivable how a newspaper asking these irrigators to save it and its constituency from ruin, could seek to ruin them, and how legislators representing a constituency begging to be saved from ruin, could join in a filibustering scheme to ruin others.

But without any bargains the Assembly has done nobly, and there can be no doubt but that the Senate will do likewise, and California will receive such an impetus in her onward march that the Legislature of 1885 will ever be held in grateful remembrance.

W. S. GREEN.

Sacramento Capital.

A Dangerous Amendment.

An effort is being made to amend Senate Bill 210, declaring against riparian rights, or the English common law, our Supreme Court has shown a disposition to sustain, confining the water of the flowing streams to the natural channels and preventing its use in this State for the most necessary purposes, by a proviso giving to riparian proprietors the right to flow past their premises of sufficient water for stock and domestic purposes. This seems so fair and reasonable on its face that it has inclined many legislators, unacquainted through personal knowledge and experience with the questions involved in this momentous subject of irrigation, to look upon it with favor. But we assert that this apparently fair and reasonable provision, in its practical effect would nullify all irrigation legislation, effectually check the prosperity of the southern part of the State, and cause it to retrograde in the path of progress as fast as it has hitherto advanced. To make this clear, we set out by stating a fact familiar to every resident of that section, or of any other arid country, that the largest end of every stream is upward, and the little end downwards; or, in other words, while the streams issue from the mountains bold and strong, they grow rapidly smaller as they advance into dry plains until, except in flood times, by evaporation and absorption, they sink and disappear altogether. A few miles beyond these points of disappearance, where the floods reach, spread over extensive tracts and make swamps, are the lands of the riparians—swamp lands so called, for which they have obtained title from the State by the construction of drainage works or levees to prevent overflow—the men who are opposing the irrigation bills now before the Legislature. They hope, through the absurd law referred to, to practically own all these streams and hold all the vast interests above them at their mercy. This they now see they cannot hope to accomplish on the bare monstrous proposition involved in the common law, and hence this amendment giving them more than they could have if never a drop of water had been diverted above them. It was only in flood time, in the unchanged natural conditions, that water reached them at all, and then came a superabundance, forming lakes and ponds lasting all the season, while in the

normal stages of the streams they disappeared miles before they reached the lands that in flood time they submerged.

What is the effect then of this amendment? Is it not to give these alleged riparians all they could get under the broadest construction of the common law? To give them water for stock and domestic purposes when the streams are not in flood and water is most needed for irrigation, would be to compel every drop to remain in the channels to sink in the sands long before it reached their lands, giving them power to levy tribute upon the agricultural interests above them in millions of dollars annually. Besides all these riparians, cattle men have long since found that the stagnant alkaline water festering in ponds, sloughs and tule swamps, under the burning sun of the dry season, is injurious to their stock, and have substituted with infinite pecuniary advantage, the cold, pure water of artesian and other wells, which are found in abundance near the surface. The irrigation bills provide for the payment to them of all damage that may result from the diversion of water above them, which must in time again reach them more permanently by percolation, as we have elsewhere shown; but with this, which would satisfy all men in every other walk of life actuated by the ordinary consideration of interest and business, they are not satisfied. All this being so, in the light of the plain, truthful relation of facts given above, what are we to think? It is impossible to view it in any other light than that they are striving (to put it in the mildest form) to effect a huge speculation, in violation of justice, right and public policy. More plainly speaking, they are using an imaginary advantage, as Shylock did. The payment of their bond is not enough, a dozen men at most insist on being given the power to draw the life-blood from the fairest agricultural region of the State. They scorn the money-value of their claims. They want the blood and life of those over whom they imagine the law gives them an advantage. Hopeless of having this openly confirmed, they have resorted to insidious methods, trusting that they may thus grasp the prize they cannot gain openly. It should be borne in mind that in taking away and paying these men for their alleged riparian rights, the same rights still remain to them that are common to all. They may become appropriators of water connecting with the irrigating systems above them so as to convey water with as little waste as possible, and in the seasons of overflow they will still have, the only time they have ever had it, more water than they want.

Fresno Expositor.

Irrigation Laws Must be Passed.

Every member of the California Legislature should feel it a duty incumbent on him to see that suitable laws are passed at the present session for the protection of the irrigation interests of this State. The southern half of this great State is almost entirely dependent on irrigation for the success of its agricultural and horticultural interests. The average annual rainfall

is not sufficient to produce crops or maintain the thrifty growth of vegetation, and without irrigation the land would remain forever uncultivated. But since water has been turned out over the thirsty plains, orchards, vineyards, fields of alfalfa, and waving corn have sprung up as if by magic, and the hot, brown, desolate waste transformed into shady groves, green, cool and comfortable retreats, the cosy and comfortable houses of the intelligent and industrious tillers of the soil. Before this change, in seasons when the rainfall was sufficient to produce crops of grass, great herds of long-horned cattle roamed over the country at will, and when they were fat enough for meat, they were gathered up by a few Mexican vaqueros, and driven to market, where they were sold by their owners, the California cattle kings, and the money stowed away in their coffers at San Francisco, or invested in the purchase of swamp land along the rivers and streams, that they might secure summer grazing when the overflow subsided. The whole population of the southern counties was then but a few thousand people, more than half of whom were Mexicans. The diversion of the waters of the rivers and streams, however, caused the plains to be settled up, and the long-horned cattle were driven from their free ranges, and their owners were compelled to fence their swamp lands so as to keep their stock off the farmers' fields. Of course, the stock-raiser's profit was materially reduced by these circumstances, and avarice has caused them to seek some plan to check the progress of the country, and, if possible, drive the farmers from their fields that they might again hold dominion over the broad acres of Southern California.

The doctrine of riparianism was dropped on, and, notwithstanding that these men had purchased what was known as swamp lands, which extended only to the banks of the streams, and had subsequently secured the return of their moneys from the public treasury by swearing that they had so reclaimed these lands from the overflow of the rivers as to render them capable of producing crops, they went into the courts and swore that the water was appurtenant to the land; that the land was worthless and unproductive without the water, and asked to have those who had diverted the water and put it to a useful purpose enjoined from reaping the fruits of their labor and intelligence, and that the water be permitted to flow on and ever past their swamp-land farms. The prayers of these petitioners were granted by the courts, and, so far as their judgments are concerned, the farmers of California are perpetually stopped from the use of water from the rivers and streams for irrigation. This great injustice the California Legislature is now called on to rectify, and it must not falter in its duty. If it does not come to the rescue of the irrigators now they will rue it. Woe to the members who oppose this interest, should any of them ever aspire to office and come to this part of the State seeking votes. A mark will be put on them, and their political doom forever sealed.

Resources of California.

Necessity of Irrigation—A Terse Review of the Subject—The Conflict Between Riparianism and Irrigation.

Of the tide of immigration which has poured into California during many years past, a large current has turned into the southern part of the State, attracted by the great promise of wealth that section bids fair to yield.

The mildness of the climate during the winter season, united to the varied agricultural possibilities of the soil, and the immense area of land purchasable at cheap, almost nominal rates, have proved the powerful lodestone which has drawn population and capital to it.

The leading inducement, however, to this current lay in the fact, that while the dryness of the climate and the aridity of the land rendered it impracticable to cultivate with success when depending solely upon the scanty rainfall for water, yet by means of artificial irrigation products which, in more northern climes, are planted beneath the snow, flourish there side by side with the luxuriant vegetation requiring the burning sun of the tropics, and perennial crops are produced without danger or loss from dry years. There were to be found lands which, appearing as dreary and sterile as the Great Desert of Sahara, needed but water to transform them into green waving fields of wheat, or shady orange groves.

Scarcely a single stream of the thousand and one of this fertile region but whose waters directed by human agency are, through irrigation, furnishing daily means of subsistence to the people and making solid additions to the permanent wealth of the State. Large portions of the Southern counties are networked with irrigating canals and ditches, furnishing water to farms of from fifty to thousands of acres.

The water which is used for irrigating purposes is diverted from streams under the supposed authority of what is known as the law of appropriation. Without this law such diversion would be unlawful and impossible. If our laws and our courts had not, in time past, indeed, ever since the conquest of the territory from Mexico, authorized the appropriation of water for irrigation, nearly a million acres of land now cultivated would still be virgin soil, and of the 150,000 people who form the population of Southern California, the greater proportion would be strangers to our State.

Three months ago, while the people, resting in the fancied security of their water rights acquired by appropriation, were harvesting their crops, gathering the fruits of the year, or preparing for the coming season, like a thunderbolt out of a clear sky, came a decision of the Supreme Court blasting and destroying the cherished popular belief of years past. This decision of the court is to the effect that the common law of England is the law of California so far as it relates to the water of streams, and that, as against a riparian owner, that is to say, the owner of land upon the river bank, an appropriator has no rights. Afterwards the court recalled the decision and ordered a rehearing of the question. It is, of course, impossible to foretell what the final conclusion will be. It is even possible that the court may

not feel called upon to determine the question in the particular case pending. The decision may not be reached for many months. Whatever be the result, it is enough that the irrigating industry of the State is paralyzed for the time. Until a certainty is established one way or the other, irrigation is at a standstill. With every knock at the door, the irrigator will quake, lest he be confronted with a sheriff, injunction in hand, issued at the suit of the riparian owner, forbidding him from diverting water for his withering vines and fruit trees or burning grain. The irrigators recognize the practical result which will follow the reassertion of the decision. They know that it will exterminate the irrigation interests of the State beyond revival, except by legislation.

Under the common law of England it is well settled that an action will lie for every disturbance of riparian rights, without evidence of appropriation of the water for any purpose of utility, *and without even proof of any special damage, but simply on the ground that a legal right is injured by the disturbance*, and that this is sufficient damage to support the action; appropriation of the water of flowing streams for purposes of utility is deemed of no importance whatever as a mode of gaining a right *or of acquiring a right to sue for a disturbance*.

It is equally well settled by the same law that a riparian owner cannot, except as against himself, confer on one who is not a riparian owner, *any right to use the water of the stream*; and any use of the stream by a non-riparian proprietor, *even under a grant from the riparian proprietor*, is wrongful, if it sensibly affects the flow of water by the lands of other riparian proprietors.

The first proposition above stated forbids irrigation by the riparian owner; the second closes the door upon the non-riparian owner entirely, and precludes him from acquiring any right whatever to the waters of a stream, even for ordinary domestic purposes, much less for irrigation. It matters not how near his land may be to the river, so that it does not form part of the bank; it is of no consequence what his necessities are; he shall not so much as dip a bucket of water from the stream, without the deed in writing, signed, sealed and delivered to him, of every riparian owner below to the mouth of the stream.

Governed by this law, if A, who owns a section of land one side of which borders upon a stream, sells to B one-half of his section away from the stream, B does not become a riparian owner. He cannot use the water, nor can he buy the right from A. He must first seek and satisfy every other owner on the stream.

The very large majority of riparian owners, however, are appropriators. Never relying upon or caring for, perhaps ignorant of, their riparian right, they have availed themselves of the usages and customs of the State, and the decisions and laws under which appropriations are sanctioned and authorized, by the actual diversion and use of water for irrigation.

Such owners will be enabled, when they so desire, to subdivide their lands, and sell portions not adjacent to the river, together with an interest in their water right, unless the common law of riparian rights is adopted.

Suppose for the moment that we should so modify the common law as to authorize the irrigation of riparian lands. The rule above stated would still prevent the riparian owner from granting any privilege to irrigate any land away from the stream, or from conveying, with a water right attached, any of his land not adjacent to the stream.

The whole system operates to restrain the alienation of land in localities where irrigation is a necessity, and to prohibit the irrigation of non-riparian lands.

From every standpoint taken in the discussion of the relative merits of the controversy between riparianism and appropriation, the conclusion is irresistible that one or the other must fall. Life to riparianism is death to irrigation. The union of the two is legal miscegenation.

This is the state of affairs from which the people of Southern California are crying to be extricated. That interests of the people of the entire State must be closely allied to irrigation cannot be doubted. Irrigation cannot proceed without the right of appropriation. Appropriations cannot be made under the riparian law of England.

The Legislature is called upon to apply the remedy without delay. The right of appropriation should be so fortified by law as to make it operative even against riparian owners. If such owners have vested rights of property of which they will be deprived by firmly establishing the right of irrigation, let them be properly compensated, but do not yield to them the right to stand in the pathway of the State to wealth and prosperity.

S. F. Examiner.

Irrigation.

The people of Southern California, a quarter of the population of the State, are watching the fate of the irrigation bills before the Legislature with intense anxiety. The entire State is in sympathy with the efforts of the irrigators to obtain legislative relief. When the recent decision of the Supreme Court, sustaining the ancient doctrine of riparian rights, was made public, those dependent upon irrigation were appalled. They saw instantly the frightful consequences certain to follow the practical enforcement of the principle of the decision. It was apparent that irrigation must cease. The laws of the State, adopted solely for the purpose of furthering the progress of its people, have been found by the Courts to contain an element fatal to the advancement of half the State. The irrigators assembled in convention, and, after lengthy deliberation, appointed an energetic committee to prepare bills for presentation to the Legislature, the passage of which might afford relief. These bills have been carefully formulated and revised by this committee, and by the Irrigation Committees of the Senate and Assembly, aided by suggestions

from others interested in the subject, until they are now believed to meet the necessities of the situation as nearly as possible. The irrigators of the State, almost without dissent, are satisfied that if these bills become laws, they will establish the right to use of water for irrigation, and will lay the foundation of a wise system of regulating such use, which can be perfected in the light of experience.

Very few in the Legislature will have the courage to openly oppose these bills in the face of the universal demand for their passage by the people, irrespective of party. The policy of the small opposition is delay. The bills have been made the special order for to-morrow in both houses, when the effort to obstruct this important and much needed legislation will probably be renewed.

The people will not be satisfied with the passive votes of their representatives upon the bills themselves. They look for active support, which shall push these measures to the front, suppress delay, and bring each bill to a vote on its passage before adjournment. If they fail, Southern California will have no politics but irrigation. In the time coming, the highest recommendation to the people of that section will be a record of faithful and active support of the measures proposed by the irrigators. They will deal political death to those who fail them on this question.

San Francisco Chronicle.

The Irrigation Bills.

When we in this country speak of the common law of England, we mean the great body of law which grew up by degrees out of the varying wants and conditions of the British people, and was rather a compendium of established customs than a body of statutes. Bracton entitles his great work on the common law, "Of the Laws and Customs of England." And all writers point out as the chief merit of the common law its flexibility and adaptability to different conditions and necessities. It was in effect a judicial and not a legislative expression of what was fair and reasonable in view of all the circumstances of the case. Applying this definition of the common law to section 4468 of the Political Code, the meaning of that section would seem to be that judges in this State were to pursue the course which judges in England pursued when new cases, involving new wants and new clashings of interests came before them; that is to say, they were to decide on broad general principles of equity and the public good. If England had been a rainless country, like Southern California, the wants of farmers would have led to "customs" of irrigation, and the courts would by their decisions have given to these customs the force of law. They would have constituted part of the "common law."

Los Gatos Mail.

The Irrigation Question.

The bountiful rains in this part of the State save us from the troublesome necessity of irrigation. If, however, we had but four inches of rain scattered through the season, so that scarce a grain of wheat would sprout, the matter would be of great importance to us. This is the condition of San Joaquin Valley, south of Stockton, embracing a country three hundred miles long and from one to two hundred miles wide, containing one-fifth of the area of the State. The most of this land, with rains or irrigation, is capable of producing large crops. The Fresno Colony is an instance to this point. Water enough falls on the mountains above, if it were impounded and utilized, to irrigate this whole tract. If settled as thickly as many countries in Europe and cultivated as highly, 10,000,000 people would live in comfort on it. According to the decisions of the courts, some one, or any one, who lives on the streams may demand that no water shall be taken from the channel; that all shall run to the sea.

Grass Valley Tidings.

Burning Question.

The *Colusa Sun* says of irrigation that it is the "Burning Question." The *Sun* is perhaps right. It is a question whether the policy should be to continue to let our vast plains burn every summer season, or whether by the proper distribution of water those plains shall be made fresh and green and bearing all kinds of crops. There is plenty of water for the purpose of making all these dry plains into gardens, and never was water in any land better situated for easy and cheap distribution. But there are a few men who live by the side of natural streams, and those men want the water to run along by their lands and not turn a wheel or give life to the germ of a single seed. And these few men seem to have the advantage of the contest. They are backed by an old law made for another and a different country, and in an age when machinery was not used, and when irrigation was but little understood.

Watsonville Pajaronian.

The Legislature has at last taken up the consideration of the irrigation question. The decision of the Supreme Court, reversing Judge Brundage's decision in the case of Miller & Lux vs. Haggin & Carr, has created a feeling of uncertainty among the settlers in the San Joaquin, Los Angeles and San Bernardino valleys, and through their representatives they are appealing to the Legislature to set at rest this vexed question of water rights. For years the settlers in the San Joaquin and southern sections have been, by canals, diverting the waters of their sections from their usual channels, and thereby have cultivated extensive tracts of land, and have increased the

resources and productions of the State. The settlers are known as appropriationists, and they have made the desert part of this State productive. Prior to them were the stockmen. They did not molest the flow of rivers. They did not want the land tilled. They used the land for pasturage, and the rivers were the drinking resorts of cattle. With the advent of the farmer the bounds of the stockmen were narrowed, land became more valuable, and the herdsmen had to show title for what he claimed. The two interests clashed, and trumping up the water question the stockmen have attempted to cripple the farmers. The colonists of the San Joaquin and southern valleys, after years of untiring labor and expense, have completed a vast irrigating system, and have made the desert lands of the Joaquin and southern sections bear bounteously in fruit, grain, etc. They have organized thriving colonies. They have built up towns and counties. They have increased the wealth of the State. Their towns show an air of prosperity. They have converted the cattle ranges into cultivated land. They have their homes, churches and school houses. They are thriving and prosperous. The cattle king did nothing but raise cattle. He added not to the wealth of the State. He kept out immigration. He made neither towns nor homes. He allowed the rivers fed by the snows of the Sierras to run to waste year after year. He claimed the land along the rivers and claims the water. Against him is the appropriating farmer, who believes that the water should moisten the soil and cause it to bear as nature intended it should. The Legislature is now discussing this water question, and in its treatment should consider the relative worth and importance of the farming and stock interests. A victory for Miller & Lux means stoppage of the development of the San Joaquin Valley and ruin to thousands of now prosperous settlers in that section. A victory for the farmers means increased development of every part of the State, increased immigration and increased prosperity. The irrigation question should be settled this session.

There is water enough for all here if properly utilized, and it is not right to make a desert of thousands of square miles of fertile land in order to allow a few men to tie up large streams of water that may be made to convert small areas into a garden.

Pacific Rural Press.

Irrigation Legislation.

It is probably clear by this time, if it was not before, that the problems are affected by an unmeasured multitude of conditions. No doubt the committee of the Fresno Convention realized this while they were drafting their proposed enactments, and subsequent discussion has doubtless convinced them that there are still other conditions to be met with which they have not dreamed of. We infer this much from the fact that they have already modified the bills which they had prepared, and they seem to be actuated by a desire to secure what is necessary for their success, with as little as possible of injury to others. In the bills which they prepared they

aimed to set forth, not new theories and doctrines, but rather to embody the wisdom which has been gained from experience in other States which have preceded our own in the progress toward a systematic arrangement of matters affecting irrigation. Colorado is such a State. She has advanced far beyond us, we understand, in the area irrigated and the capital directly invested in such enterprises, and her law-making bodies have struck upon pioneer ground in irrigation legislation. The results of this experience are, of course, of much value as data in settling our own problems. It is fortunate that a body of men like the Fresno Convention have been found to give their time and insight to the work of preparing bills for the discussion of the whole State. We trust that the wisdom which has come in large measure from other quarters may be of avail in supplementing work which they did, and in giving us laws which shall be fit to secure the grand result which is being labored for, to wit: the development of our irrigation enterprises, the rescue of still greater areas from wild worthlessness to rich production, the multiplication of homes on waste lands and the consequent duplication of the vested wealth of the commonwealth.

The Galt Weekly Gazette.

A proper system of irrigation, by which the broad and fertile acres of the Sacramento and San Joaquin Valleys could be irrigated, would prove invaluable and of paramount importance to this State. The subject deserves attention, and it is to be hoped our able statesmen in the present Legislature will devise some means by which the State can provide for and perfect a system of irrigation sufficient to procure an abundance of water for this purpose.

Modesto Herald.

The irrigation question seems to be the heavy problem of the present session of the Legislature. It is one of vast importance to a large portion of the State, and many of the members are pledged to use their influence to have a law passed practically condemning all the water-rights now in existence, thus abolishing the old common law and appropriating all the streams to the use of those who wish to divert it to productive uses. Riparian owners are fighting the measure.

Kern County Californian.

The newspapers of the State outside the districts where irrigation is practiced seem slow, says the Colusa *Sun*, to grasp the problem of irrigation. We must exempt from this remark the *Alta*, *Chronicle*, and *Examiner*, of San Francisco. We print to-day an article from the latter paper which shows a broad comprehension of the whole situation. We also print a very excellent article from the Sacramento *Sunday Capital*. The *Bee* has assumed a par-

tisan attitude against the irrigators, and the *Record-Union* is mum. Now is the time for men to show their hands. No man need stick his head up in the politics of the State who now arrays himself against this great interest. The man whose brain is too small to see and to comprehend the vastness of this subject—to see the wealth that must follow good laws and the poverty which must come of not acting—must expect no recognition at the hands of the people. We warn ambitious men in the Legislature that against each name a “lasting record stands for glory or for shame!”

Kern Co. Californian.

In another place we give a well-considered article from the *Alta*, entitled “Importance of Irrigation,” which ought to awaken the people of San Francisco to the necessity of bringing their influence to bear upon the Legislature in the way of enacting laws to protect and promote the irrigation interests of the State, now seriously threatened, to the serious injury of that city, as will be seen by those directly interested in its growth and prosperity, if they will but consider the subject. The views taken in the article in question should be strenuously and persistently urged by every journal in the city, The *Alta* has always enunciated correct views on this great subject of irrigation, which it has been the first of the city papers to see is of paramount importance, and we expect with confidence that it will be an advocate as strenuous as it is powerful of the measures that will be introduced into the Legislature with the endorsement of the Executive Committee of the State Irrigation Convention.

San Francisco Alta.

Importance of Irrigation.

It is well known that the business of San Francisco has been very much depressed for the last six months. Trade has been more nearly in a condition of stagnation than for a long time past, and our manufactories have had difficulty in finding work for their usual number of operatives and paying them the accustomed rate of wages. Those who have goods have been unable to sell them, and those who have money have been unable to loan it. The banks are overrun with idle capital, for enterprise is paralyzed and confidence destroyed. This was the condition of things during the greater part of 1834, and though with the coming of the new year a few rifts through the clouds appear, the state of trade is very unsatisfactory. Our commercial bodies have been conducting investigations into the causes of the depression and inquiring what can be done to hasten a revival. As San Francisco's prosperity is dependent on the prosperity of the country regions in which she finds a market for her goods, it is evident that no remedy for the trade depression will be effective which is not sufficiently far reaching to touch and revive the drooping industries of the interior of this State, as well as the contiguous States and Territories.

As one among the ways in which prosperity in the farming regions can be stimulated, the importance of settling the irrigation difficulties that have hung like a cloud over the progress of half the State, cannot be overrated. Capital is waiting to take up the work of improvement as soon as it is given the protection of the laws, to the extent that capital in other enterprises is protected, but until that is done it will not move hand or foot. The protection which capital asks is merely a sound title to what it creates, which it cannot obtain in the present anomalous condition of the laws. Fresno county and Tulare county have each invested \$1,000,000 in irrigation ditches; Kern county has invested \$2,000,000, and other counties proportionate sums, and at least 1,500,000 acres of land are now cultivated by irrigation. These are the most prosperous districts in the State; the lands are divided into small farms, and the owners are making money. The success of the operation is demonstrated, and the work of irrigation will commence on a far larger scale as soon as the legal difficulties that have been gradually thickening around the irrigators, and which have finally culminated in the riparian rights decision of the Supreme Court, are definitely settled. Not only is there a certainty that without legislation the progress of turning deserts into oases will stop, but there is danger that what has been accomplished will be undone, if this fatal decision stands and its sweeping effects are not evaded by some flank movement of legislation. The irrigators have powerful enemies to contend with, and among the most powerful are procrastination and pettifoggery. Legislatures kill by indirection measures which they dislike to openly oppose, unless a strong public demand for the passage of the irrigation law is made, and there is danger that it may share the fate of many other meritorious bills that have been "nibbled to death by pismires and kicked to death by grasshoppers." It is the duty as much as the interest of San Francisco to assist in creating this public demand.

S. F. Examiner.

Beware of Delay.

Two important irrigation bills now before the Legislature will come up in the Assembly this evening as a special order. The importance of the subject to a large proportion of the people of the State cannot be over-estimated, and the representatives of the people should bring them to a speedy passage. It will not do for any member who favors continued postponement to say that he is in favor of the bills and will vote for them when reached. Whoever advocates such action is no better than the most malignant foe. The late decision of the Supreme Court has stabbed Southern California near to the heart, and her people are calling upon this Legislature to stanch the gaping wound. It will soon be too late. Nothing but instant action will avail. The few selfish riparianists counsel delay. They know that further delay is their only hope for success. Their argument is, that the subject should receive long consideration, and that sixty days is too short a time in

which to reach a conclusion; and that will be their argument at the next session, and yet the next, provided they carry out their plans now. There will never come a time when the Legislature will be better informed than now. The necessity of this legislation will never be greater than at this moment. The irrigators, large and small, may reasonably anticipate a cyclone of injunctions against the use of water, after adjournment, without legislation. In another two years, without water, every leaf and stalk of vegetation now thriving from irrigation will have shriveled and withered to the dust from which it came. The just wrath of a ruined community cannot be appeased if, in answer to its demand why nothing was done, their representatives reply that the time was too short for careful consideration. The history of the American people shows that they have endured great wrongs with patient submission rather than resist oppressive laws other than by authorized methods. But the instinct of self-preservation is strong in communities as well as in individuals. If the wisdom and good will of this Legislature do not unite to save the State from the evils of riparianism, the people will condemn at the ballot-box all who openly oppose the irrigation bills, and all who hypocritically pretend to favor them, but counsel or assist in delay, which is tantamount to defeat.

S. F. Alta.

Move them Up.

The overwhelming majorities by which the irrigation bills have been made the special order for Monday afternoon in both houses, gives gratifying evidence that the Legislature realizes the great necessity of the hour. To-day the irrigation interests of the State are in a condition of paralysis, due to the uncertainty of the law of water rights, and to the possibility that the law as it stands may be construed to their destruction. If this condition of things continues the ruin of property in Southern California, and the consequent decimation of the population of that section, will soon have its natural effect on the commercial pulse of the State.

The merchants and manufacturers of San Francisco are accustomed to tracing the causes of activity or stagnation of business. They know that the development of Southern California is greatly to their interest, and that the arrest of irrigation and the resulting destruction of property can only be productive of loss to the business of this city. It is not to be denied that such a state of affairs is the inevitable consequence of a failure by this Legislature to come to the rescue.

The irrigators know what they need. They assembled in convention at Riverside and Fresno, and agreed upon the outlines of a plan for their salvation. This plan was crystallized into the form of several bills, which, after having received thoughtful consideration by men of practical experience and learning, and modified so as to avoid objections made from time to time, are now being urged in the Legislature. The loss to San Francisco by the failure

to pass these bills cannot be estimated. No business man can afford to risk the experiment of trying to get along two years more without this legislation. This Legislature is about to make history of itself upon this subject.

The journals of the Senate and Assembly will become interesting reading to this mercantile community when Southern California shall have become a burden to the State by the failure of these measures. The San Francisco delegation should not be dilatory in their support. Immediate action is what is wanted. The session is nearly ended, and the bills should be advanced to the place to which their importance entitles them—second to none.

Fresno Republican.

The Riparian Sack.

The Sacramento *Capital* of February 8th, says:

“The Irrigation Committeemen have been hard at work all the week, but it is very much feared that the riparian men have captured the Legislature, as it is known they are spending a great deal of money to defeat the most important measures that have come before the body during this session. It is a well known fact that the appropriators have but little or no money to spend on the fight, as they represent the bone and vim of the southern part of the State, while the large landholders are backed by some of the wealthiest corporations in the State. If the bill does not pass, the people may rest assured that money defeated it.

We do not believe that the riparian sack has done the work which our contemporary apprehends it has. The members of this Legislature can better afford to defeat the will of the people on any other question than that of irrigation. The legislator who now puts himself on record as opposed to irrigation in California will have hanged a millstone about his neck, which will grow heavier as time and experience prove that he either had not the brains or the honesty to support measures upon which the material welfare of the State depends as upon no other issue that has ever been submitted to a legislative body in this State. There are undoubtedly men in the Legislature who would sell anything they have on earth for coin, but we are not yet prepared to believe that a majority of this legislative body will deliberately sell the interests of the people to a few land-grabbing monopolists and cattle kings, who will, if this Legislature sells them the power, own the waters of natural streams in California, and at their pleasure can change the fruitful and blooming valleys back into desert stock ranges or exact tribute from the humble tillers of the soil whose farms and homes depend for existence upon the right to use the surplus waters that under the common law belong to the last man on the stream. It is no idle threat when we say that every man in this Legislature who falls down before the golden calf of the riparian monopolists will be a marked man in politics in this State. He who betrays the cause of the people in this fight is essentially either a fool or a knave, and the chances are a hundred to one he is the latter. The situation is so keenly defined

that a legislator, though he be a fool, need not err therein. It is simply a question of right, justice and the State's welfare against the corrupting power of wealth and greed.

The Fresno Expositor.

The Great Issue.

The San Francisco industries languish. Her merchants complain of hard times. The Chamber of Commerce and Board of Trade have appointed committees to examine into and report on the causes of the present depression. The committees have not reported, and when they do we doubt whether they will arrive at the actual facts. But to one who does not belong to the committee, and is not a member of either of the great city's Commercial Boards, the causes of the dullness of trade are very apparent. The stoppage of the mines under the debris decisions and the natural and gradual decline of that business has done much to reduce business in San Francisco, as all of the supplies of the miners are purchased there. The completion of the several trans-continental railroads is another cause. The Northern Pacific has taken away the Oregon and Washington Territory trade, while the Southern Pacific has changed that of the southern counties to the East. These are the main causes of the stagnation in business at the Bay. But these depressions will be only temporary if San Franciscans are true to their interests. Let them rally to the aid of the farmers in San Joaquin Valley, and urge the passage of needed irrigation laws, and they will soon see an empire built up that will cause San Francisco to flourish as it never has before. The San Francisco "Alta" has a true conception of the situation. In a late editorial it says to its readers: "Every business interest that San Francisco possesses, whether commercial or manufacturing, will be benefited by the removal of the obstacles to the cultivation of the great interior valleys and their increase of wealth and population. San Francisco is now suffering from lack of markets, and those noble valleys, the Sacramento and San Joaquin, are the places where they may be built up—markets at our own door—markets which Chicago and St. Louis can never take away from us. Combined, the Sacramento and San Joaquin valleys have an area as large as Ireland, or about 32,000 square miles. No similar area in the world is capable of supporting a denser population than these valleys, and if they were to-day peopled as closely as the nation of Belgium, they would contain 15,000,000 souls. This is sufficient to show what a commercial empire we have right here at our doors if we develop it rightly. It would be preposterous folly for San Francisco to fail to do anything that lies in her power to aid in the multiplication of small farms in the valleys and the bringing of them to a high state of cultivation; while to offer direct opposition to anything that tends in this direction is simply suicidal."

Sunday Morning Capital (Sacramento).

The Same Old Opposition.

The opposition to irrigation and to the pending measures concerning it before the Legislature, comes from the same source as the opposition to the "No Fence Laws" when under discussion some years since by the same body. The owners of the great cattle ranches of the upper San Joaquin valley all fought the "No Fence Laws" just as they are to-day fighting the proposed "Irrigation Legislation." They are using the same general argument they used then, namely, the damage they assert would result to the cattle business. And as a final parallelism in the contest the same argument of a sound and true public policy, that which is the object of law to secure and conserve, the greatest good to the greatest number, overcame this one interest claim, and the "No Fence Law" was enacted just as a favoring "Irrigation Law" should now be enacted. The three things which make a State powerful, prosperous and enlightened are a great population, a great aggregation of wealth, and the nearest practicable equable distribution of the latter among the individuals of the population so that the extremes of material condition shall not be the rule. It is the object of a true public policy to secure these ends. California can never make either commerce or manufacture the leading interest of the State, for in these respects, great as are our natural advantages, other countries and other States have far greater, and in the race for supremacy have a lead which cannot be overcome. Agriculture must then be the source from which must come the elements of our greatness and prosperity, and our laws must be such as shall favor it in every way possible. The amount of land available for agriculture is fixed so that the smaller individual holdings the greater the population that will occupy it, is a truth which it requires no argument to demonstrate. The greater the net yield of each acre the greater becomes the aggregation of wealth which is the portion of the net yield not consumed. Small land holdings favor the greatest possible net yield per acre, and from this, of course, the greatest possible accumulation of wealth and directly the equable distribution of it. Therefore should those branches of the agricultural industry be favored which conduce to our small land holdings. The cattle-raising industry, as carried on in this State, requires large land holdings, and, of all agricultural industries, requires the least manual labor and produces the smallest net return per acre. The net return, of course, fixes the value of the land, and in the cattle industry fixes it necessarily very low. Cereal culture employs the labor of several families, where only one man was required for stock-raising, and multiplies many times the net return per acre, and of course makes the land much more valuable. The "No Fence" law made cereal culture practicable in localities where before it was only possible to engage in the stock-raising industry, and to that extent has increased the material resources of the State. Horticulture, or a diversified agricultural industry, will employ ten or even more families where one is employed producing the cereals, and will give ten and even twenty-five times the net return per acre, making the land propor-

tionately more valuable. To express this argument roughly in a land formula, a land holding of 100 acres, cultivated horticulturally, will be the equivalent in the population it will of necessity utilize, in its net return, and its absolute monetary value, of 1000 acres cultivated in the cereals, or of 10,000 acres employed in stock-raising. Can anyone gainsay but that the material condition of the people under the first-named condition is better than under either of the last two? nor that there is in material condition any vast gulf in social and intellectual life between individuals engaged in horticulture as exists between the non-resident so-called "Cattle King" and the serf who tends the flocks by night. Now, if these premises be true, it is incumbent on the State to foster horticulture and a diversified agriculture, even if thereby the interests of the stock-raisers and cereal farmers are affected injuriously. No measure is more calculated to serve this end than favoring irrigation legislation, which is even more desirable in that it will be a positive benefit to cereal culture and to the stock business. So far as wheat is concerned, the experiment has been tried, and land that would return only ten to fifteen bushels an acre, with uncertainty even as to that much from year to year, irrigated yields sixty with certainty of the maturing every crop. For the stock business with irrigation it will be possible to grow alfalfa, which cannot under our natural conditions be done except in a few favored localities, thus securing the greatest practicable economy of land in that branch. But it is in horticulture and the diversified agriculture we find the greatest relative and absolute gain with irrigation. Its possibilities can be seen within thirty miles of Sacramento, in the vicinity of Newcastle, where land that ten years ago was considered valueless, or nominally held at \$2.50 per acre, is now worth from \$100 and upwards an acre, is producing a net annual income of from \$100 to \$300 an acre.

The Issue of the Hour—Lucid Letter of J. Campbell Shorb—Law of Riparian Ownership vs. the Doctrine of Appropriation.

Argument in Favor of the Appropriation Theory—The Two Systems of Using Water Contrasted—Reasons and Rhetoric.

[The following letter from a well-known public man was written to a State Senator. It was not intended for publication. It was printed in the Sacramento Record-Union, from which the Times copies it, as an intelligent, though somewhat florid, discussion of a subject of vital interest to the people of Southern California. As we understand it, the views here expressed are substantially those also entertained by J. De Barth Shorb, who is now at Sacramento, laboring to procure legislation in this line on the irrigation subject.--Ed. Times.]

SAN FRANCISCO, February 2, 1885.

My Dear Friend—For your kind and very prompt favor of Saturday, please accept my sincere thanks. Your letter struck a very high key note, which it sustained to the end.

* * * *

The wisdom which consigned the shoemaker to his last has never been questioned, never will be, and the doctor who sticks to his pills may attain spheres of eminence and success denied to his versatile but not less honest and sensible brother. Condemned by painful and long-continued illness to abandon the active duties and labors of my professional life, my search for health was mostly spent in the northern portion of this great State, and last March I had the luck and pleasure of attending the opening of the first formal convention of the State Irrigation Society, which met at Riverside, in San Bernardino county, in March last.

I don't know if business or pleasure ever took you to Riverside; if not I trust the latter soon may, for business might hurry you away without giving you leisure to realize what Riverside really means, the beauty it comprehends, the wealth it represents, the homes it has furnished, the comfort and happiness it suggests, its future—but here I halt! The sword of Damocles hangs over its head and its hilt is in the hands of a riparian owner.

But let me return to the convention! I met men there from the East and West, from the North, and, of course, from the South, and a more thoroughly practical, devoted, intelligent, honest and unselfish body of men I never saw congregated in my life.

Knowing there were antagonistic elements and interests there, I marveled at the harmony which prevailed from the beginning to the end of the chapter. The evidence of combustion that friction is almost sure to develop was nowhere present.

Now long anterior to this time, years ago I had the honor on invitation, of delivering the opening address of "The Southern Horticultural Society" in Los Angeles.

I called attention even then to the absolute necessity of irrigation and the enactment of wise and satisfactory legislation as vital elements of the prosperity of the State of California, particularly the southern portion of it, where mighty tracts of noble land only waited the advent of owners and water to far surpass the wildest dreams of the enthusiasts in the marvelous returns they would make to the planters. I demonstrated that but for the wisdom which inspired, and the patriotism and industry which built the stupendous aqueducts which carried the fertilizing waters through all the diameter of the historic plain to the north of the Persian Gulf, the countless millions which filled the territory between the Tigris and Euphrates could never have been supported for a day. The pioneers found here, in the farthest West in California, conditions which prevailed in the farthest East "when the world was young," conditions which forced primeval man to do exactly what we are doing to-day, conditions which inspired the building of those canals whose melancholy ruins the traveler finds even now on the desert waste between the rivers, once the radiant center of a polished race and brilliant civilization!

My study of irrigation commenced thus years ago, and has never been interrupted. You see now, my dear friend, I'm no babbling neophyte in the

department of science, and that when, in that dogmatic way I said, the other day, "the riparian law won't do," I had reason for the faith that was within me! Besides, I know of no law, human or divine, which forbids the cultivated physician from prosecuting the study and investigation of a science like philanthropy, a science, anyhow, that lies so close to his own, a science of which medicine is but a single rung in the ladder, a rung which does not mean a rest, but an invitation and inspiration to climb, which the physician must accept if he would reach that height and distinction attained by Abou Ben Adhem, when, disappointed with the angel's answer, he won the goal at last when he told Him, "Write me, then, as one that loved his fellow-men."

I repeat, when I spoke so boldly, so presumptuously, of the riparian law, it was not the fluffy assertion of a superficial enthusiast, the vain utterance of a selfish and empty mind, or the dogmatic expression of ignorance, prejudice or injustice.

The Supreme Court of the State of California is an august body of learned and just men. This Court has enunciated its views on the question of water rights. They are in absolute antagonism to my own views, and yet I claim and know that I reached my conclusions as honestly and conscientiously as they did, and yet with a consciousness of demerit which does not preclude hope. I calmly wait the relentless arbitration of the future to declare whose conclusions are right at last.

This Court expounds, explains, and declares the law for us. Now, law is or ought to be, in its sharpest and most crystallized expression, the systematic recorded decrees of common sense and exact justice; and when I find a law, no matter how high its origin, no matter how learned the man or men who enunciate it, no matter how fair it seems, how sweet it reads, no matter how buttressed by precedent and revered by age, if this law is a violation of common sense and an outrage on justice, it is no law, and sooner or later it will be wiped out of existence.

Let us quietly contemplate these two problems that now seem enveloped in such dense obscurity, dividing ideas and opinions in reference to the subject of irrigation.

I know not if you run a mine, own an orchard or vineyard, or own a flock of sheep or cattle, and I'm quite sure that such would not be found in the inventory of my realty. My home is where I hang my hat, and this refreshing freedom from every possession that might embarrass temperate, careful and unselfish investigation, is an excellent condition and preparation for wise judgment and just conclusions.

In the first place, the two interests now opposed are the riparian or English idea, and the appropriation or the American idea and interest. The first, pure and simple, ordains that as legislator, judge or citizen, we must accept or adopt the laws in this direction, and that ownership of waters in a natural stream is vested in the man who owns the land on one or both sides, and that this partial occupancy makes him the unqualified owner of all the water,

which must be kept in the natural channel and not diverted from it for the good of his neighbor below, no matter how much he wastes and the other wants.

All right! That he has some interest and property in the water, no one will deny, but how much? That is the vital question. Now we will stop just here for a moment and ask to what end and purpose does the riparian owner devote his water? To his cattle and sheep, horses, mules and pigs—in a word, to his stock.

He came upon the stream when there was no other man in sight, and bought largely in land on either side of the stream and built himself a home. He came or went there in the spring. The stream was running bank high. The spring wanes, the summer comes and drags its slow length along, and autumn, hot and dry and dusty, arrives. The stream is running, but it is low and brackish, evidently unhealthy, for his cattle, drinking it, sicken and die.

But let us suppose that it is running still full. He needs other water for himself and family. He bores a well, and up from subterranean reservoirs comes water in endless quantities, cold, clear and healthy. It runs to waste on the ground; millions of gallons sink back into the earth and disappear forever! Not a blade of new grass marks its advent or disappearance.

Now comes another man below his lines of possession on the stream and buys a large tract of land. He takes water where it is running to waste—of no benefit to anybody—and carries it out on the land, and further and further he carries it as long as it will run or flow. The land, before sterile or unproductive for want of water, manifests its real strength and vigor, and the fields grow green with plentiful promise—orchards and vineyards spring up like magic, homes multiply, towns, aye, almost cities, grow up like Aladdin's palace, in a single night; temples, dedicated to the worship of the everlasting God, appear; school houses are built; streets and roads are completed; stores and warehouses are being rapidly pushed to completion, and the gloomy, uninviting, unproductive desert blossoms with life and vigor, promise and plenty!

But we will go back for a moment to the spot where the appropriation man began his lonely enterprise. He was working to feed men, women and children, and not cattle! He was working for humanity, and not for droves of horses and mules. The cattle are still there, roaming upon a thousand hills, sleek, fat and healthy. But where is our appropriation man, the pioneer? Out on the little green knoll, surrounded by a white picket fence, sleeps his last sleep, the pioneer who began this work of progress and civilization, and his monument is seen and his epitaph is read in the cities, on the plain, in the homes and hearts of the people who swarm over this once lonesome and desolate desert. He had worked early and late in the mists of the morning and beneath the merciless rays of an almost tropical sun; he had worked in the mud and filth to dig his ditch and build his home, living on the coarsest fare and drinking deadly water, with the fatal malaria rising like a foul steam

all around him from the earth he had removed, and the end had come at last! Why, a bronze man, with heart of steel, lungs of brass and ribs of iron could not have delved and slaved and starved without wrecking his strength and health and life at last! * * * * *

And now comes the riparian owner, when all this scheme of progress is on its march to marvelous consummation, with a shotgun in one hand and the judgment of the Supreme Court of California in the other, and tells the successors of the pioneer dead and gone: "Close up that ditch, and turn the water back into its natural channel."

Aye! turn it back, and let the homes built upon it perish from the earth. Let the cities fall to ruin, the towns disappear; and let the weeds grow again in the streets and roads. Let bankrupt and broken-hearted men, and swarms of women and children, once so prosperous and happy in their homes, join their beggar husbands and seek other homes and places for the future!

Aye! turn it back, and let the magnificent illustration of peace and progress and plenty be transformed once more into a howling wilderness, whose silence and solitude shall be broken only by the lowing of the herds upon the hills, the scream of the coyote ranging for food, and the sullen maledictions of desperate men who had a right to justice. * * * In the name of Almighty God, shall this fearful wrong be done? In the awful name of Justice, shall this nameless sacrifice be consummated in her very temple, hard by the blazing lights and amid the perfumed censers of her holiest tabernacle? In the name of Humanity, shall this modern illustration of the "Slaughter of the Innocents" be allowed to blur and blot and foul the fair record of this State forever? It cannot, it must not, it shall not be done, for the people will not allow it to be done!

Have I overdrawn the picture my dear friend? Have I painted in too tragical colors the truth of this portentous crisis?

I make no attempt to direct your views or bias your judgment, for I know it would be useless; but I am your friend and want to remain your friend, and will believe whatever is done by you will be done as your conscience directs. But I beg you now solemnly, as I would beg my brother, make no mistake here!

Right on this problem, your future cannot be assailed. You will stand before this people by far the most powerful man in the State. You will be honored, loved and respected by thousands whose names you will perhaps never know, and when that hour comes, that awful hour that comes soon or late to all men born of woman, the hour of death, it will be full of perfect assurance to you, full of honor and glory, full of the perfect assurance of speedy and eternal reward, of which none is higher than that exhaled from the record of one "who loved his fellow-men."

Your friend faithfully,

J. CAMPBELL SHORB.

The Colusa Sun.

Irrigation Legislation.

We print several articles on the first page on the subject of the proposed irrigation laws; but what subject can be of greater importance? We have been bending all our efforts for the last two months towards trying to get some laws by which it may become possible for the people to take water from the streams to be used for irrigation. This would seem at first blush to be an easy job, but it is an Herculean task. Many conflicting interests were to be comprised, and some could not be. There are men interested in having thousands of square miles of land remain a range for cattle; then there are others who hold lands at the sinks of certain rivers, who will consent to the passage of no law on the subject. The common law of England gives the whole volume of the stream to the man the lowest down, and that man is in a position to blackmail all above him at will. Then "low down" claims are millions, nay billions of money, if the owners are allowed to dictate their own terms. The Fresno Convention tried to compromise with these owners, but could not. Then the "sack" came. Men who had favored irrigation became impressed with the idea that the question was so complicated that nothing could be done. Newspapers that professed to believe in irrigation could find nothing but lunacy in any section of the bill proposed by those who had experience with the question. Some progress has been made; the committee of the assembly on Wednesday evening unanimously recommended the following bill for passage:

Section 1. Section 1422 of the Civil Code of this State is hereby repealed.

Section 2. Section 1422, that part of the common law of England, which relates to riparian rights, is hereby declared to be repugnant and inconsistent with the climate, topography, physical condition, and necessities of the people of this State, and the laws thereof, concerning the appropriation of water for purposes of irrigation, and to that extent forms no part of such laws; and the use of water for said purposes of irrigation is a public use.

Section 3. Section 1423: Any person who deems himself damnified by the exercise of the right of appropriation of water, may bring suit to recover damages for the injury sustained.

Section 4. Section 1424: Any person contemplating the appropriation of water for irrigation purposes may acquire, in advance or at any other time, property necessary or proper for such appropriation, and for the full and complete execution and enjoyment of such appropriation, by proceedings under Title VII of Part III of the Code of Civil Procedure of this State, entitled "Eminent Domain."

Section 5. Section 1425: All existing rights of appropriators are hereby confirmed.

This is the only bill that has any reference whatever to persons outside of those who appropriate and use water. The two bills which are to follow, and which are longer than this, refer exclusively to the regulation of matters

between irrigators. There must be either a right to appropriate water or no right. If given, it must be in plain, unmistakable language.

Sacramento Sunday Capital.

A Few Reasons—Some Untold Facts About Irrigation, Etc.—How Irrigation Acts on Desert Land—Not Necessary to Keep up a Flow.

The discussion of irrigation in its relation to the industrial interests of the State, has been generally with reference to the artificial application of water to the surface soil as taking the place of the natural precipitation of rain to the extent of giving both surety and increase of production. It has been dealing with direct results overlooking certain indirect ones as being either of relatively little importance, or as in the case of influence on the navigable streams, assuming that irrigation may be carried on to that extent that an injury results in part at least counter-balancing some of the direct benefit. It is the purpose of this to show that the indirect results are as desirable as the direct, that they are of great importance, and that no injury can result to the navigable rivers no matter how extensively irrigation may be carried on. Going into the foot-hills and examining the old mining canals and ditches now utilized for irrigation, it will be generally noticed that a very large proportion of the water taken in at the head, in some cases as much as one-half disappears by precolation into the ground through which the ditch passes. That this water is not lost is evidenced by the large number of springs, the flow of which is entirely from this water; for let no water be running in the ditch for a few days and these springs either run dry entirely, or flow very much smaller streams. Wells under the line of the ditches become dry under similar circumstances. It is from springs and wells under these conditions that

A LARGE PORTION

Of the water used for household purposes in the foot-hills is obtained, so should the taking of water into these ditches be stopped it would not alone take away almost the entire productive capacity of the soil, but would strike at life itself, making necessary the abandonment of many homes through the impossibility of great difficulty of obtaining water. This is no fanciful picture of imagination but a realizable fact under the conditions given. Passing from the consideration of irrigation in the foot-hills to it on the plains of the great valleys, similar indirect results are observable. On the higher edge of these plains, extending from the hills several miles out into the valley, the soil is more often than otherwise underlied with porous strata. The soil of the rest of these great valley plains seems to rest on a hard pan impervious to water. This in some places is only a few inches below the surface, in others is a hundred feet, and in slope is toward the main river channel depression, making the flow of the underground waters take that direction. All of the mountain streams in crossing that part of the valley underlied with porous strata, lose a fixed amount of water, different with different streams, of which

the greater portion must get under the hard pan referred to and find its way to the ocean through subterranean channels. This loss is independent of the season of the year, being as great in winter as in summer, and in some streams takes the entire flow except in the times of the

HEAVIEST FRESHETS.

Another loss of flow ensues after this belt of percolation is passed, through evaporation, which is very large during the dry season, and between both these losses it is safe to say that not over one-half of the water in the streams when they come into the valley, reaches the main navigable river channels during that portion of the year between May 1st and January 1st. This, too, is their only source of supply under conditions of no irrigation, as the drainage from the arid plains whose only water supply is from a light rainfall, is practically nothing. Consider now the results of the most effective and complete irrigation in this same section of country. The water of the streams is diverted where they leave the hills, into ditches and canals from which direct percolation and evaporation are at a minimum, and distributed over the surface through smaller channels. A comparatively small portion of the water is lost by percolation into the porous belt at the edge of the foot-hills, and the flow can practically be considered as divided into three portions, the relative ratio of which is inconsequential, the first is evaporated directly from the surface, the second supplies the needs of vegetation, and the third remains in the soil above the impervious strata referred to till what is termed the point of saturation is reached when this third portion drains into the main river channel. This third portion and its effects are of very great importance, and should not be overlooked in considering the problem of irrigation. In Kern county under the line of, and several miles distant from what is known as the Calloway canal in the formerly

ARID PLAINS,

Where it was necessary to sink wells from eighty to one hundred feet to get water, it is now obtainable at depths from ten to twenty-five feet. Alfalfa once well rooted can be grown under these conditions without direct irrigation. In Fresno county a like condition is observable, water is found at twenty feet where it was necessary to dig one hundred formerly, and in some localities so saturated has the soil become as to almost convert the barren desert into a swamp, tules growing on the uplands. This saturation is not dependent on a continuous flow of water in the irrigation canals, as it will continue during the months of the dry season in which there is no water in these channels. The drainage from these saturated soils directly into the main river channels has already been referred to. This in positive benefit to the navigability of the rivers is much more than the equivalent of the water withdrawn from the tributaries, even if the quantity thus returned is not fully equal or in excess. The water is diverted from the tributaries in theseason of the year when most loaded with sediment, and when it takes only a surplus flow from the main rivers; it returns cleared of sediment, and during that part of the year when the rivers are at the

LOW WATER STAGES.

Another practical point has also been determined that should have some effect at least in determining the sincerity of the existing opposition to irrigation, namely, that the natural average of the dry season flow of any of the tributary streams in the lower reaches of their channels can be diverted far above and delivered at the highest point of the riparian lands of these lower channels, the water that would be lost in the natural flow of the streams between the hills and the aforesaid lower portion of their channels, serving to irrigate and render fruitful the uplands. Can any riparianist claiming damage on account of the taking away of water from his land, honestly assert that the same water is more valuable to him at the lowest point of his land than at the highest?

Fresno Expositor.
Fail Not At Your Peril.

Information reaches us that the riparianists have opened their batteries with full force against irrigation legislation. Emissaries of the land and water grabbers are at Sacramento doing their best to obstruct legislation on this important subject, and are continually endeavoring to burlesque the efforts of the Irrigation Committee. Mercenary newspapers have also been secured to devote their efforts to deride the great issue of Southern California. The friends of irrigation must, therefore, be on the alert. They must write and battle for the common good of the people. It is true that the demands of the irrigators are so square, honest, necessary and just, that the Legislature ought not to hesitate a moment about the matter, but pass the necessary laws without delay. The sentiment throughout Southern California in favor of just irrigation laws is too strong, too united and too determined to be misunderstood by the Solons at Sacramento. They want laws that will enable them to divert the waters of the various streams for irrigation, and which will protect them in the enjoyment of these rights. Certainly the representatives of the people are not going to lay back and say that they cannot do anything for the fostering of this great interest, nor do we think they will be foolish enough to put themselves on record as being in favor of letting those who chance to own lands along a stream to say that the water of that stream must continue to flow for all time past their lands, undiminished in quantity and undisturbed in quality. This is the English riparian law, which the Supreme Court has recently decided, applies to this State. We call upon the Legislature to be true to the people, and to work for the best interests of their State. Pass the irrigation laws suggested by the committee, and thus restore confidence throughout Southern California. If you would aid the prosperity of your State, do not hesitate—act promptly and earnestly in behalf of the irrigators. It is the paramount issue of the southern half of the State—all other matters pale into insignificance when compared with this great question. Gentlemen of the Legislature, falter not in your duty in this matter.

Colusa Maxwell Star.

A Prosperous Country.

Our trip to Fresno as a delegate to the State Irrigation Convention, was attended by scenes and incidents well calculated to inspire new courage in the fight which we have made from the beginning, namely: For the overthrow of old ideas, usages and customs, and place in their stead the progressive system, of which irrigation is at the basis, and which has become a rule of the great local commonwealth of Southern California. The trip was one of which it may be truly said one passes from an old civilization into the new—from a dull, languid monotony into thriving, prosperous, and happy communities. Prosperity, as it always does, has drawn from other and less profitable fields, talent, capital, and energy. Indeed, the array of local talent which found expression in the Convention is as brilliant as may be found in the councils of the State.

The social conditions of that section are healthy, while the physical, in all respects, are of the most perfect order. The products find a ready market at figures always ranging far above the cost of production. Great wineries have sprung up which send out hundreds of thousands of gallons of wine annually, while thousands of tons of grapes and raisins are put on the market every fall. Here, too, we find the home of the wealthy. Oakland has no attractions for the wealthy citizen of Fresno. The extraordinary healthfulness of that section is a stern rebuke to those of this section who oppose irrigation on the grounds of it being the cause of malaria or sickness. We have always looked upon that theory as absurd, but now, we brand it as the theory of those who never search for causes. If it is true that irrigation produces malaria, then every section where irrigation prevails is malarious. In the southern counties, in a warm climate, where irrigation is universal, we find the general health of the people is much better than on the dry Colusa plains. Hence, the theory is groundless.

But there is an important feature of irrigation to which we wish to call attention, and that is that the surface water in the irrigation districts of Fresno has, in some places, raised to the surface, and as unreasonable as it may seem, in places where prior to irrigation it was twenty feet to surface water, now a system of drainage is becoming necessary. It is a demonstrated fact that each year less water is required for irrigation purposes, a fact that figures largely in the size of the proposed canal through this country, necessary to irrigate our lands for all time. We believe that a much smaller canal than has been proposed would furnish all the water that will be required.

In conclusion, we tender our thanks to the citizens of Fresno for the very warm reception and kind treatment which we received at their hands. A more public-spirited, courteous and open-handed people we have never met, and we tender our congratulations to them on their good fortune of being citizens of a county that is among the most progressive in the State.

Resources of California.

Few understand clearly the necessary result of the application of the English doctrine of riparian ownership. It is, that no person, not even a riparian owner, can remove one drop of the water of a stream for *irrigation*. The common law did not sanction irrigation—nothing but domestic use. It follows that all water must run to waste, under this law. When a man advocates riparianism, he advocates the absolute non-use of water for irrigation:

If it should come to pass that this pernicious and fatal principle shall come to be enforced in this State to its full extent, the voice of the people will be heard at the doors of this Capitol in tones of stern command. They will deny to the tribunals which they have constituted the power to maim or destroy their resources. They will crush the accursed doctrine, and with it those who stand under it.

But we believe that the intelligence and honesty of this legislature will repudiate every principle of the English common law which conflicts with the right of appropriation. If the water is to be utilized for irrigation, there is no reason for hesitation in determining by whom. By the owner of the banks of the stream? Why? What has he done, that he should have it? Let justice be done to the appropriator. To quote from Justice Field's decision in a leading water case, in which the riparian doctrine is rejected and the right of appropriation maintained: "He who first connects his own labor with property thus situated and open to general exploration does, in natural justice, acquire a better right to its use and enjoyment than others who have not given such labor."

Who are the riparianists who are raising the hue and cry of "stop thief" through their organ at Sacramento? So far as heard from, although they are making themselves very active, the roll-call of their noble army carries but two names, one from Tulare and one from Kern, both of which have been represented before the irrigation committees by attorneys. A distinction must be made between the terms "riparianist" and "riparian owner." An "riparian owner" may be defined as one who owns land by or through which flows a natural stream or water-course. A "riparianist" is one who wishes to make it the law of the land that a riparian owner is entitled to the undiminished flow of the water-course by or through his land—as under the common law of England. There are several riparianists who are not riparian owners. There are two riparian owners who are not riparianists. Hundreds of riparian owners, farming by irrigation, obtain their water by virtue of the laws authorizing its appropriation. They are in favor of recognizing the validity of those laws, because, being now satisfied with the rights acquired by their appropriations, they believe, and truly, too, that under the common law theory, the privilege of taking water for irrigation will be lost to them.

There is not a riparian owner who irrigates south of Lathrop who is not an appropriator. Many of them are actually represented by the committee from the Fresno and Riverside Irrigation Conventions, and all are anti-riparianists.

They set a much greater valuation upon their vested rights as appropriators than as riparian owners.

The riparianists beseech the Legislature to "go slow" on the irrigation question.

This recalls Joe Jefferson's *Rip Van Winkle*. While under the encouraging influence of "Schnapps," Rip was asked what he would do if Mrs. Van Winkle were drowning, and should cry out to him, "Come and save me, Rip!" To which he replied, "If Mrs. Van Winkle were drowning, and she said to me, 'Rip, come and save me!' I would say to her, 'Mrs. Van Winkle, I will just go home and tink about dat.'"

The people from Stockton to San Diego are crying to this Legislature to save them from riparianism.

Will the Legislature "go home and tink about it?"

It is well to consider well before legislating, but it is to be hoped that this will be done before going home.

San Francisco Call.

Passed the Assembly.

The Assembly has passed bill No. 171, repealing the common law of England in as far as it guarantees riparian owners any rights in this State, and bill No. 170, providing for the diversion of water and the adjudication of water rights. If the Senate passes these bills the problem of irrigation will be placed before the people for practical solution. The Legislative Committee on Irrigation, to whose steady and intelligent work the passage of the bills in the Assembly is largely due, does not claim to have devised a perfect system of irrigation. They have presented the system which seems the best, and which may be perfected as practical use exposes imperfections. Of the ultimate success of these measures there can be no doubt. The question is whether the present Legislature will act or whether it will throw the decision into the next State campaign. The Republicans and Democrats are evenly divided in the Senate, but as yet the issue has not become partisan. If either party in the Senate throws its weight against irrigation it will be held in the next campaign as having taken that side of the question. The Legislative Irrigation Committee states that the cost of irrigation work now constructed and in progress of construction is not less than \$100,000,000. The figures seem extravagant; but the works now approaching availability will, no doubt, furnish means of irrigation for many hundred thousand acres, and it is estimated that the water in one river, economically distributed, will suffice to extend irrigation to millions of acres as yet untouched. Next to the prohibition of Chinese immigration, this is the dominant issue in this State. The Senate may put the work off two years, but in the end a measure of such vital necessity will be carried.

San Francisco Post.

Act at Once.

It is understood that Senator McClure disclaims the paternity of the Irrigation Commission bill, the object of which is to postpone action upon irrigation for two years longer, and that he is a warm advocate of the bills already passed the Assembly. In this course he is joined by other Republican Senators. This is an emphatic contradiction of the absurd assertion which has been made that Republicans are making a party fight against irrigation.

The destruction to speedy passage of these measures comes mainly from Democratic Senators, led by Cox, Cross and Spencer of Napa. It is simply a criminal disregard of the public good for any Senator to prevent a vote on these bills, even though he may be in good faith, opposed to their passage. To press the Commission bill will involve the defeat of the Fresno bills. The member who shall obstruct their immediate consideration and passage, upon the ground that further investigation is necessary, will sooner or later find himself cast into a political purgatory, where, apart from the din and turmoil of contending parties, he may occupy his leisure with the study of irrigation. This week must not pass without such action as will make the final passage of the bill before adjournment a certainty. Take them up tomorrow, and every succeeding day, until all are read a third time and passed. Their importance outweighs all other proposed legislation. Imperative duty to the people forbids another moment of delay.

The Colusa Sun.

Irrigation.

It is but fair to say that the *Sun* insists that the Sacramento River is in no danger from any possible diversion of water for irrigation.—*Sac. Bee*.

Yes, that is just what we do say—that the Sacramento River is not in danger in the least from the passage of the Irrigation bill. The fact is, there are only two or three times during a winter that water can be taken out of the river for purposes of irrigation, and then only when the river is bank full. We do say that if every drop of water in the river could be used on the soil of this great valley for agricultural, horticultural and vinicultural purposes, the State would be the richer for it. We are not fighting Sacramento City, the Hog's Back, nor any interest of vital moment to the welfare of the people, but we do want to see the thousands of poor men, who have small farms, but no water, have a chance to use the very element that makes soil productive. The *Bee* also says:

The question of *drainage*, we take it, must be, for all time to come, of even *more importance* to this valley than navigation.

The italics are ours. We say irrigation is more important than navigation; you say—drainage. Think of the difference. Irrigation means productiveness, wealth, happy homes, support of Sacramento, San Francisco,

and a prosperous civilization. Drainage means—please tell us? For the life of us we cannot see the logic of your reasoning.

Say this river is worth, annually, two million dollars to the counties through which it flows, what would it be worth were its waters used freely in every part of these counties where it is needed? Two millions? Three times that much, and no paper knows that better than the *Bee*. But all the water needed for irrigation purposes can be obtained at a time or times when navigation is not affected in the least by it.

We have great respect for vested rights, prescriptive rights, etc., but when we see vast districts of rich soil valueless because of a lack of moisture, then we go for a change.

Sacramento Bee.

The Doctrine of Riparian Rights.

SACRAMENTO, Feb. 7, 1885.

EDITORS BEE—Last night I was before the Senate Committee on Irrigation, and I was surprised to find men in attendance there who were opposed to the diversion of water from streams for irrigating or any other purpose, insisting on riparian rights, as defined in the decision of the Supreme Court, simply, I suppose, because they happen to have a bit of land upon the margin of some stream. It does seem strange that a man could be so selfish, and have so little public spirit. Let us look at the practical working of said decision, to-wit, that the water must run in its natural channel through (or alongside of) plaintiff's land—*undiminished*. According to that decision, no one has even riparian rights except the last man on the stream. That man, though he might own but 40 acres, could cause hundreds of families and millions of acres to suffer, while he, like the dog in the manger, could not use the water, nor would allow any one else to do so without buying the right of him at whatever he might choose to assess. With this state of affairs, large communities, large interests, even the districts of large cities, would be in the hands of and completely at the mercy of one contrary or mercenary individual. I do hope that the Legislature will wipe out this horrid doctrine by the enactment of good laws for the equal distribution of the waters of the State among the citizens of the State. W.

Stockton Daily Independent.

Angry Irrigators—Bogus Petition Against Passing Irrigation Bills.

MERCED, February 21.—A letter from Senator Spencer was received to-night by W. L. Ashe, in which the writer states that a petition has been received by Assemblyman Goucher, from Merced, the signers thereof requesting that the irrigation bill now pending in the Assembly be opposed. The news of the existence of such a petition created quite a commotion among the citizens, to whom it was a genuine surprise. No one can be found who

knows anything concerning it. Handbills have been posted, calling a mass meeting to be held at ten o'clock Monday, to frame resolutions and a counter-petition. The sentiment among all classes is strongly tending to promote the interests of the irrigators.

THE CULPRITS FOUND.

MERCED, February 21.—Since writing the above a number who signed the anti-irrigation petition have been seen and several stated that they did not understand the motive of the document. None, so far as known, are property-holders.

Examiner.

The Irrigation Measures.

The snap of the party whip by the Republican State Central Committee is not as effective as was anticipated, against the Fresno irrigation measures. There are Republican Senators who will refuse to submit tamely to the orders issued from Republican headquarters commanding them to sacrifice the people's welfare. Even so strict a party man as Senator McClure, generally holding himself amenable to party discipline, will not, it is said, forego his views in favor of the prompt adoption of the Fresno Convention bills, even at the mandate of the governing organization. Such independence, for the common good, is worthy of praise. It is to be hoped that the untimely attempt to make a party fight against these bills will be resented by other Senators with no less independence and good judgment. There is nothing in any of the bills to make a party question of, nor is there anything in them which a man of sound judgment can refuse to support. Should the proposed measures become laws, running water will hereafter be devoted to irrigation, and any one whose property is taken or injured will be indemnified. The wisely extended and strong public feeling in favor of these bills arises, not from the unreasonable and selfish demand of a fraction of the community, but from a universal belief, pervading all classes and all sections, that they form the best and only relief from the present deplorable condition of the State water system. If the Republican policy shall induce any Senator to antagonize this legislation, he will soon learn that opposition to the wish of a whole people is destructive of political life, and that in some cases obedience to party dictation is not encouraging to political ambition.

San Francisco Chronicle.

Irrigation.

The Assembly has been spurred to do its duty on the irrigation matter, and the whole series of Fresno bills—the useful ones as well as the ornamental—have been passed by overwhelming votes. They now go to the Senate, where they should consume little time, as the subject has been fully

discussed and every member is or should be prepared to vote. The time is short, but it is enough if Senators will curb their propensity to break out in oratory. There is no call for speechmaking. Nobody hears Senatorial orations; nobody wants to hear them. What is wanted is action—prompt, clear and decisive.

If the Senate does its duty, the entire set of Fresno bills can be passed before next Wednesday, and a practical start may be had in the business of supplying water to the southern counties before April 1st. Some of the bills are not perhaps all that every one could wish. Objections carrying some weight may be urged to several of their provisions. But they are, on the whole, good bills, framed in the right direction, and calculated to accomplish a useful purpose. Their defects will be better discerned after they have been tried in practice than they can be now. Two years' experience of irrigation under State laws will suggest a number of desirable amendments which can be passed at the next session of the Legislature in 1887. But in the meantime, people who want water will get it, and irrigators will adjust their necessities and their action to the laws, such as they are.

It is beyond the power of the Legislature to interpret laws, and the decision of the Supreme Court in the case of Miller vs. Haggin will, so long as it is undisturbed, prove somewhat of a stumbling-block to irrigators who are contending against the acquired rights of riparian owners. But it is not unreasonable to expect that the almost unanimous expression of public opinion which has been called out by the discussion in the Legislature will have its effect on the minds of the Judges of the Supreme Court, and that, on the rehearing, the practical inconveniences resulting from the late decision may present themselves in so strong a light that it may be reversed.

Fresno Expositor.

If the statesmen in the State Senate who aspire to higher honors, expect to get any votes in Southern California two years hence, they had better give their hearty influence and support to the irrigation measures now pending before the Legislature. Irrigation will be the politics of the southern counties two years hence, and fealty to the cause will be the leading point by which they will be gauged. There is no such thing as riparian rights in California, as defined by the English common law, and the Legislature should hasten to declare the fact.

Kern County Californian.

Irrigation Bills.

A large portion of our space is this week devoted to the irrigation bills now before the Legislature. These do not constitute all the bills now before that body. Several others have been introduced, but they are not important and are not likely, in the stages to which they have advanced, to come up

for consideration so late in the session. We did not publish these bills before because, until now, they had not reached a stage of perfection satisfactory to the authors and promoters. It is unlikely that any of them, except the first, will meet with further amendment, and if they become laws, it is altogether probable that it will be without change. The first in order, consisting of amendments to the Code, needs no explanation. It is designed to complete the title devoted to water rights in the spirit which pervades it down to the last incongruous section for which one is substituted designed to meet the wants and necessities of this State rather than those of Alaska, where floods of rain or heavy falls of snow are characteristic of the seasons at all times. It is self-explanatory, and requires no comment. Following is one providing for establishing and adjudicating water claims, so that the rights of all appropriators of water may be definitely determined and made matter of record and appurtenant to the land, giving to them positive value. The next is a bill providing for the formation of water and irrigation districts, in order that the distribution and use of water may be regulated on a basis of justice, and its waste prevented. The last in order is an amendment to the Constitution, for the purpose of protecting capital invested in irrigation works, and for the purpose of encouraging its further investment in reclaiming the waste places of the State. Should the proposed amendment be adopted, we are assured that the requisite capital would be at once forthcoming, to reclaim what is known as the "weed patch" in this county, by the construction of reservoirs in the mountains and the conveyance of the water, to the points where needed, by means that would prevent absorption and waste. And this great enterprise would be only one of many that would be at once inaugurated in the southern part of the State.

Los Angeles Daily Herald.

The tactics resorted to by obstructionists in the Assembly for the purpose of staving off action on the Irrigation Bill, though persistent, serve only to make the friends of the cause more in earnest than ever. Some of the obstructors clutch at very fragile straws. One ingenious gentleman, when at length the previous question was moved, for the purpose of putting an end to the farcial amendments offered by the opposition, rose to remark that he had nothing to say on the motion, and was reminded promptly by the Speaker that he could not say anything, being out of order: the question was put. It is not probable that the passage of the bill can now be prevented by the kind of tactics mentioned. Should the bill become a law, as there is now every reason to hope and believe, our people will have cause to be grateful to the gentlemen who composed the Fresno Convention and to those now aiding in the passage of the bill.

Colusa Maxwell Star.

We have been at some expense and trouble to find out whether or not California is in need of irrigation laws, and have contributed our mite to the end that needed legislation may be had at the present session of the Legislature. At present we are without laws granting the right to appropriate water from running streams for the purpose of irrigation, and hence those sections that have availed themselves of the use of water for this purpose, and are wholly dependent upon irrigation for sustenance are without legal protection to rights to which the god of nature entitles them. Irrigation will sooner or later be demanded by the great agricultural interests of the State, and sooner or later they must and WILL have laws that will forever settle the question as to the free use of running water for that purpose. The enactment of necessary laws by the present Legislature will save our southern brethren much annoyance, litigation, and possibly violence.

Fresno Republican.

The Sacramento *Capital* says truly that the fight against irrigation laws is the same old opposition that was made to the "No Fence Laws" some years ago. (It is a struggle on the part of cattle kings and land monopolists of Southern California to retain their grasp upon vast bodies of public domain, and at the same time hold a monopoly of all the waters of the natural streams. Most of these cattle kings acquired their vast tracts by open and notorious fraud, and with their ill-gotten gains they are now corrupting the law-making power and blocking the wheels of progress in the State.)

The long delay in commencing active work on the irrigation question in the Legislature endangers the passage of the bills on account of the lack of time. It is hoped the members of the Legislature have given this question the consideration which will enable them to act promptly upon it, for without prompt action the fight for irrigation is lost, and another two years of darkness and uncertainty must be gone through with by the farmers and horticulturists of Southern California. It is this feeling of uncertainty that is now holding in check the increase in population necessary to the prosperity and advancement of the State. This Legislature has not yet done anything that is calculated to merit the grateful remembrance of the people, and if it now fails to do its plain duty in a declaration of the right of the people to use the surplus water of flowing streams, and the adoption of laws to regulate such use, it will pass into history as one of the most useless of all California Legislatures, and that is about the worst thing that could be said of it.

Fresno Expositor.

The Legislature and Irrigation.

The great struggle between the cattle kings and the people is still going on at Sacramento. In the Assembly the appropriators appear to have matters their own way. This is largely due to the fact that the Assembly more prop-

erly represents the people, coming as it does from them; but in the Senate the lines are more closely drawn, and the passage of suitable irrigation laws a matter of extreme difficulty. Since the adoption of the new Constitution the Senate has failed to meet the wishes of the people, and in a large measure has ceased to be a representative body. There are too many men in it who aspire to be statesmen, and too many who have not the brains to reach that lofty attitude. Still there are in that body a majority of good men and true, and if they can be brought to study the question of irrigation and wants of the people there is no question but what that all the irrigation measures proposed by the irrigators will become laws. But the trouble is that the subject is new to many of them, and in the hurry of a sixty-days session they have but little time to spare to study new measures. Reddy is working manfully for the irrigators, and he is ably seconded by Del Valle, of Los Angeles. Whitney, of Alameda, is with the irrigators in feeling; McClure knows the necessity of enacting laws on the subject and will vote with the people to repeal the obnoxious section of the Code pertaining to riparian rights. Cross, of Nevada, appreciates our wants, and is in hearty sympathy with the irrigators, though not exactly agreeing with them in reference to all their measures. There is room for much effective work in the Senate, and it should be done at once, as the time for the adjournment of the Legislature is rapidly approaching.

The irrigators of Southern California will gratefully remember Assemblyman Munday, of Sonoma, who has led the contest in the House on their part. He has championed their cause with marked ability and with great zeal. He is a brilliant young man, and will make his mark in the world. Hon. C. F. McGlashan, of Nevada, made a brilliant speech in behalf of the irrigators, which showed that he understood the situation, and was with the people. Hon. John Yule, of Shasta, Dr. May, of San Francisco, Hon. Mr. Weaver, of Humboldt, Hon. R. P. Ashe, of Kern, have done us noble service that our people will remember, should opportunity offer. Of course, Assemblyman Clark, of our own county must not be forgotten. He has worked for the irrigators unceasingly.

The Senate spent another day in talking about the irrigation bills yesterday. The enemies of the measure propose to kill them by talk. It was a bad mistake when the bills were referred to a Committee of the Whole. The friends of irrigation should see that the bills passed by the Assembly take a different course.

San Francisco Examiner.

The Live Issue—Voice of the People on the Irrigation Question—General Desire Manifested for Legislation Upon the Subject of Water Distribution.

To show intensely the people of various sections of the State are interested in the question of irrigation, a few extracts are herewith published from a number of letters received by the *Examiner* during the past few days. They have been selected at random as samples, and clearly indicate how important

the subject of a water supply for irrigation has become to the people of the State.

In San Bernardino.

RIVERSIDE, (San Bernardino County), Feb. 22.—The principal hope of the people of San Bernardino, is the supply and economical distribution of our water supply. Heretofore we have regarded it as an assured fact that we could control sufficient water to irrigate our lands. This idea seems to have been a delusion, since the advocates of riparian rights have appeared in such force in our State Legislature. Here, where the first State Irrigation Convention was held, where thousands of happy homes are dependent upon irrigation, we feel vitally interested in the action of the present Legislature. Will it help us? We hope so; but we are in fear lest we shall be neglected. We feel grateful to the *Examiner* for casting its influence on our side, and, while I am not a Democrat, and never was or expect to be, I repeat that the general expression here in Riverside and Redlands is that the *Examiner's* friends are aiding us. Please urge the question, for it is an important one to us. Our reservoir system in San Bernardino county is yet in its infancy, but it will grow. The waters of the Santa Ana and Lytle creek are our main resource. What we want is legal regulations for a proper distribution of the water. I have written to our Assemblyman and Senator to urge the irrigation question. Yours for more water, W. A. S.

A Voice From Butte.

OROVILLE, February 21.—Oroville 'is much interested in the solution of the irrigation question now pending in the Legislature. The *Examiner*, I think, has taken the right stand in this dispute. When I say so, I know that I decide against myself, as I own important riparian rights in Butte county, but I cannot use the water, and am willing that it should be made useful. We have a large quantity of unoccupied lands in Butte county which might be used profitably by the application of water. This is a splendid fruit region, and with the settlement of the riparian rights issue we shall derive great benefit. I feel assured that our legislators will not neglect their duty.

LEX.

A Cry From Kern.

BAKERSFIELD, February 18.—Kern county, could our people be brought together, would respond as a unit to the sentiments expressed in recent issues of the *Examiner*. We want something done in the way of legislation on this irrigation question, and we must have it done before the adjournment of the present Legislature. Down here in Kern we have had less than our usual rainfall, and the prospect looks gloomy. [Now, Mr. Editor, I am no scribe, and I'm not a man to make threats, but if something is not done to give us homesteaders equal rights with those who have special privileges, there will be a day of reckoning in Kern, and please don't forget it.] We are looking for a dry season, for one year ago we were getting lots of wet. We are short now, and if we have a bad year, the riparianists won't have any rights that will be worth respecting down this way. I am a

DEEP DITCH DIGGER.

Shasta's Say,

ANDERSON, February 20.—Will you please, Mr. Editor, say something for Shasta? It is true we have said or done little in the irrigation struggle, but I assure you, sir, that we, at least we who live in and about Anderson, fully appreciate the situation and look with a great degree of interest upon the struggle now pending in the State Capitol. We have made every effort during the past two or three years to attract immigration hereto Shasta, and with good results, too. But we are not satisfied. Like Oliver Twist, we call for more. We have plenty of water, and an expanse of fertile lands as large as my old State of Missouri, but what we want is a system of irrigation which will properly distribute the water. Shasta is alive on the irrigation business. Push on the fight and let us have the question settled. B. G. F.

Near the Sierra Madre.

DUARTE (Los Angeles County), February 17.—The Duarte is one of the best improved and most densely populated settlements in Los Angeles county. Our people here are wholly dependent upon a stream of water which we have brought at a great cost through a cemented flume over a sandy wilderness. We do not own the lands over which our water is brought, but if some one should enter these worthless lands, which are virtually the bed of the San Gabriel river, then, if the idea of "riparian rights" holds good, our Duarte, the natural orange-producing section of Southern California, would be at once bereft of water. Our representatives, Messrs. Del Valle, Banbury and Hazard have done well thus far, and they know the needs of this section. What I would suggest would be that Assemblyman Banbury would present to the Legislature a few statistics showing what Los Angeles county was before we had irrigation, and what we have done since Pasadena, Alhambra, the Duarte and Pomona have been blessed with water. Your paper, we know, favors the irrigators, and our people rely upon the *Examiner* to help us.

J. H. McC.

El Dorado.

PLEASANT VALLEY, February 23.—The irrigation problem is one that we are all interested in here in El Dorado county. Pleasant Valley, my present home, has plenty of water, and with a proper and equitable division a large area of land can be brought under cultivation. It is a mistake to say that our mountain valleys do not require irrigation and are worthless. Give us a good irrigation system, and hundreds of our now almost uninhabited valleys will become the homes of industrious families. I, for one, favor the irrigation bills now before the Legislature and published in the *Examiner*. Their passage would be good for the State.

Yours truly,

B. P.

San Joaquin County.

LOS BANOS, February 16.—Please publish the following from the western portion of Merced. If the Legislature wants to do something useful to this section, let it get down and fix up the irrigation matter. Here, on the west

side, we are poor, but we have some rights, and we want them protected. Los Banos is in the heart of a fine, fertile section, and while it is partially irrigated and a number of new ditches are in contemplation, we want more. What we ask is a fair share of the water on the west side of the San Joaquin, and if the question as to riparian ownership of the water above us is not settled by legislation now, we are certain to have trouble here before the legislature can give us relief two years hence. We are pleased with the advocacy of our claims by the *Examiner*, and are waiting to see who are really our friends in the Legislature. We are on the outside of the great Miller & Lux ditch, but have some rights to water. There are ninety-odd families in this region who are, or expect to become irrigators. We want water and can pay for it.

D. W.

In Mussel Slough.

HANFORD, February 19.—About the only topic of discussion here, at Hanford just now, is irrigation. We are waiting anxiously to see whether we are to be left in the lurch. We know the *Examiner* is "sound" on the question, as it usually is; but, Mr. Editor, we know that we have little to expect from a Legislature which elected our old enemy Stanford to the Senate. But as to the water question, we are all "solid" on that point. Will you please publish this as my prediction? I am now a pretty old man, but I can write and talk, and I say that if the present Legislature fails to do something on this most important of all other questions now before it, there will be a reckoning at the next election. At least we will have our say down here at Hanford.

PIONEER.

On the Desert.

MINTURN, February 19.—If the Legislature would adjourn and take a trip down to this point, stop off at Minturn, and see what can be done by irrigation, it would do more than anything else in the way of argument. Here we are surrounded by a fertile region, but have no water. There is plenty of water above us, but it is not preserved, but is allowed to sink in the sands and is lost. A few miles from this station (Minturn) Kohler & Co. have established a vineyard of some extent as an experiment. It is a success, and within a few years this part of the State will become a well-populated region. Although I am a new settler, I cannot see what objection can be urged against providing for a system of irrigation, which will do so much toward building up the State. I know that all we want here is water. Give us that and Minturn will become quite a place. Very respectfully,

E. W. BENSON.

A Colony's Condition.

ONTARIO (Los Angeles county), February 20.—Our colony is yet in its infancy, but has more than doubled its population during the past year. It will receive a new impetus if the Legislature would settle the irrigation question. Will you please inform us why the irrigation question cannot be settled? We are dependent here upon water for our lives. Can the Legislature deprive us of the means of living? Our neighboring colony of Cucamonga is in the same condition. If a body of men would legislate to deprive us of air,

which is absolutely necessary for the perpetuation of life, would we not become anxious? Yet, the proper distribution of water here is as important to us as the unlimited distribution of the atmosphere. I write at the request of several of my neighbors to put these questions: Has not the State the right to regulate the distribution of water in our streams? Will the *Examiner* urge the Legislature to give us irrigation laws which will prevent us from having trouble in the future? We don't get too much water in this region, and what we have we want properly used.

J. S. M.

Press and Horticultural.

Irrigation.

San Bernardino county depends largely on irrigation for its standing in horticultural matters. There are few a localities where can be found moist lands that raise successfully agricultural crops without irrigation, but as a rule moist lands are not so good for fruit, and the orchards and vineyards are therefore mostly confined to the high and dry lands that are irrigated, while the general farming is confined to the low moist lands.

In the eastern portions of San Bernardino valley near San Gorgonio Pass, there are thousands of acres of land that usually mature a good crop of wheat or barley. This land is naturally dry and has no water for irrigation purposes, but the character of the soil, altitude and general surroundings is such that small grain crops are usually a success.

The sources of water supply for irrigation purposes are many and none of them very large.

The Santa Ana river where it comes out from the mountains furnishes water for the North and South Fork ditches. The North Fork ditch furnishes water for Highlands and the Cram settlement. The South Fork ditch supplies water for Lugonia, Brookside and Redlands.

Mill Creek comes down from the mountains a few miles southeast of the Santa Ana river, and furnishes water for Craften and Old San Bernardino.

A stream running down from the south slope of San Bernardino mountain furnishes water for Banning.

City Creek, west of the Santa Ana river, furnishes water for a portion of Highlands.

The stream from Devil's canyon supplies water for a portion of the Muscapiabe rancho.

Lytle Creek, coming down from Old Baldy, west of Cajon Pass, irrigates Mt. Vernon and Vicinity.

Etiwanda canyon irrigates the settlement by that name.

Another small stream furnishes water for Hermosa.

Cucamonga is irrigated by a stream fed by springs that rise just north of that settlement.

Cucamonga canyon irrigates the Iowa tract.

San Antonio canyon on the line between Los Angeles and San Bernardino counties is equally divided between Ontario on the San Bernardino side, and Pomona and other lands on the Los Angeles side.

San Bernardino is situated in the midst of moist lands where artesian wells can be had anywhere by going to a moderate depth.

Warm Creek rises from springs in the main valley away from any mountains. This creek flows into the Santa Ana river east of Colton, and unites with the waters of that stream that rise within a few miles of the junction.

The Meeks & Daley ditch is taken from Warm Creek and irrigates a section of country below Colton.

The Santa Ana river in ordinary seasons is dry for many miles below where all the water is taken out to supply North and South Fork ditches. The waters of Warm Creek and other smaller tributaries, however, furnish a good stream again which is taken out by the two Riverside canals to irrigate Riverside. In dry seasons these two canals take all the surface water out of the river at these points, leaving the underflow to come to the surface below; but Spring Brook, which rises just northwest of Riverside replenishes the stream again.

The Jurupa ditch is taken out of the Santa Ana river that irrigates West Riverside.

The Yorba settlement, including the property of the South Riverside Vineyard Company, located on the Santa Anita river sixteen miles below Riverside, again takes all the surface water out of the river for that settlement, but other streams coming in from the north side of the river makes a good stream that goes down to supply irrigation water for settlements in Los Angeles county.

One of these feeders is a short stream that comes from a single spring that summer and winter furnishes 250 inches of water that runs a gristmill within a mile of the spring.

There are other small, natural water supplies, but we have enumerated the principal ones in this county.

A stream of water for irrigation purposes in this valley is considered well worth \$1000 an inch measured in an ordinary midsummer, and some water rights are selling at a higher figure. Hence every small stream that can be utilized is made valuable. The value of water is of course dependent to a certain extent on its location, for a small stream that will develop a small settlement is not so valuable per inch as a large stream that will make possible a larger settlement.

ARTIFICIAL WORKS.

About all the natural supplies of water having been utilized, people have turned their attention to the development of water. This is done in three ways:

- 1st—Artesian wells,
- 2d—Tunnels,
- 3d—Reservoirs.

There are artesian belts where flowing wells can be readily and cheaply obtained. The artesian belt in this valley is now pretty well defined, and outside of this belt experiments are made at great risk. Usually flowing

water is obtained in the moist and semi-moist land and very rarely on the high mesa lands.

Tunnels are being used now to save the underflow of mountain streams. Two are now in process of construction in this country.

Judson & Brown have one in the bed of the Santa Ana river below where the water is taken out of the stream to supply the North and South Fork ditches. This tunnel is not as yet completed. It is only in one or two hundred feet, and yet forty inches of water has been obtained that seems to be a permanent supply. It is proposed to extend this tunnel until bed rock is reached, when it is confidentially believed that a large supply can be obtained. The water already obtained is worth, according to the estimate given, \$40,000, which is nearly a hundred times what the tunnel cost.

The Ontario Land Company has driven a tunnel in under San Antonio creek a distance of nearly 1,800 feet, at a cost of about \$25,000, and although the work is incomplete they have about 250 inches of water, worth a quarter of a million of dollars.

There are scores of places in the county where tunnels can be run in under the beds of streams where they come out of the canyons upon the plains, and the underflow saved for irrigation purposes.

The first attempt at a storage reservoir in this county was made by Judson & Brown at Redlands. This reservoir has never been completed as at first planned, but it is now used as a distributing reservoir only. When completed it will hold winter water enough to irrigate several hundred acres of land. M. H. Crafts next commenced a storage reservoir for Crafton, which, when completed, will be a great aid to the irrigating system of that settlement.

BEAR VALLEY RESERVOIR.

The largest and most gigantic reservoir work yet inaugurated in Southern California for irrigating purposes was planned in 1883 by F. E. Brown, of Redlands, who is a civil engineer. A company was organized, and during the summer of 1884 the dam, 300 feet long and 60 feet high, of solid masonry, was built. This reservoir has a capacity now to hold water to irrigate 20,000 acres of land, and it can be made of a still greater capacity if it is ascertained after trial that the rainfall of the water-shed that drains into this valley is sufficient to fill a larger reservoir.

The winter of 1833-84 gave a rainfall in this valley of about 100 inches, or four times as much as fell at Riverside. If the annual rainfall is always four times as much as it is at Riverside, there is no doubt but that the present reservoir can always be filled each winter, as it drains a country extending over sixty square miles.

San Francisco Alta.

The Inconsistency of It.

The inconsistency of the riparianists, who are making such a vigorous fight before the Legislature, stands out in bold relief in the fact that most of them are themselves appropriators of water for irrigation, though under the letter of the riparian law they have no more right to do this than land owners a dozen miles away from the stream. The common law is that every riparian proprietor is entitled to have the river flow by his land, undiminished in quantity and unaffected in quality, and this, of course, cannot be if some of the riparianists take the water out and use it for irrigation. All the riparianists below the one who devotes it for irrigation purposes will get less of the stream, and, according to the law, will have a good cause of complaint against the divertor. But in this State riparianists are unwilling to abide by the law under which they claim all their privileges. They want to use the water for irrigation, and they do not want anybody else to use it. The irrigators are not proposing to take it without compensation, but to pay the riparianists for all the damages which they can prove they will suffer. But the latter refuse to have it taken even on these terms. They wish to use all they need themselves and to let the remainder run to waste. Such colossal hoggishness is well calculated to make credulity stand aghast, and even to paralyze indignation.

San Francisco Alta.

Its First Duty.

To-day the Legislature in both branches will take up the important subject of irrigation as a special order. Considering that this is the great overshadowing question before it, the Legislature might, apparently, have reached this point at an earlier day in the session, but there is still time enough to do the work, and do it well, if only the will exists. Irrigation legislation is a great public measure, and it must not be choked off by petty special interests and claim grab bills. In half of the State the passage of irrigation laws is a life and death question, and to the other half its importance is very great, though not so direct. In the southern counties the feeling is so strong that should this Legislature fail to provide the desired relief, an active agitation will be begun for the division of the State, and in a business way the antagonism will take the form of encouraging Eastern trade at the expense of San Francisco merchants. The Legislature having taken up the subject of irrigation, should drop other measures until this one is perfected.

Daily Expositor.

The First Gun.

We congratulate our people on the fact contained in a dispatch from Sacramento in another column, informing us of the repeal of the "old English law of riparian rights," by the Assembly last night. This indicates the suc-

cessful termination of the contest between the irrigators and the riparianists. Of course, the bill has now to run the gauntlet in the Senate, where the enemies of irrigation, progress and prosperity, together with their cohorts in the lobby, backed with large sums, will concentrate their fire on this bill, and no effort will be spared to defeat it. Public interest and opinion are no longer as politic moters of action when they are whelmed by the lavish compensation for individual interests; hence the necessity of renewed action on the part of the friends of irrigation. It is true, we have no money to pay for legislation—were it required; but we have Right and Justice on our side, and we believe, notwithstanding uncharitable rumors, that a large majority of those occupying positions as members of the Legislature, are above the seductive wiles that will be brought to bear upon them to induce their support to measures antagonistic to the best interests of the State. We have, in the passage of this bill, captured the outposts of the riparianists, and a prolonged fight from them is no longer probable after this bill goes through the Senate. But let not the friends of irrigation abate in the least their interest in the matter, but let them rather renew their exertions, and leave no loop-holes whereby our opponents can insert a reasonable hope.

San Francisco Post.

The *Examiner* is trying to make the irrigation issue a party question, and falsely asserts that members of the Republican State Central Committee are, in their official capacity, lobbying for the McClure Compromise bill. If it thinks it can make any political capital for its party by this means, we beg leave to doubt the soundness of its judgment. The immense majority which the irrigationists have in the Republican Assembly should admonish it against the foolish plea it is making. Only the Democratic Senate stands in the way of the farmer.

Riverside Press and Horticulturist.

The Santa Cruz *Sentinel* thinks the State Irrigation Convention didn't understand its business. People will differ. Some of the ablest lawyers in the State were present and gave in their opinions that the work attempted to be done by that convention was practical from a legal standpoint. It may be that the legal luminary connected with the *Sentinel* can overturn those expressed opinions. So far as the future of California is concerned in connection with the late decision of the Supreme Court, reform, revolution or ruin must follow. Let us hope that it will be reform, for revolution can not be thought of, and ruin the people will not submit to.

Visalia Delta.

Irrigation.

The Sacramento *Capital*, which still continues to work manfully in the interest of irrigation, referring to work in the committees, says:

"The irrigation committeemen have been hard at work all week, but it is very much feared that the riparian men have captured the Legislature, as it is a fact that they are spending a great deal of money to defeat the most important measure that has come before the body during this session. It is a well-known fact that the appropriators have but little or no money to spend on the fight, as they represent the bone and vim of the southern part of the State, while the large landholders are backed by some of the wealthiest corporations in the State. If the bill does not pass the people may rest assured that money defeated it."

We are not ready to believe that a majority of both houses have fallen into the hands of those men who have combined to defeat the bills, when so great an effort is being made to set the matter before the Legislature in its true light. The question has been so thoroughly discussed of late, and so much information regarding it has been placed in the hands of members of both houses, that we are still hopeful of good being accomplished.

Grass Valley Daily Tidings.

Water Monopoly.

The irrigation problem is one of great difficulty. As the matter now stands something like three-score of men, who live close to the banks of streams, want the waters to flow along and forever undiminished in quantity and unimpeachable in quality, and that no one shall have any of it. There is more of it than the bank-dwellers can use, but nevertheless they want it to keep running along. They say they are afraid to let this water be taken out of the streams lest monopolists should get hold of it. The bank-dwellers want to keep the water monopolized in idleness for fear monopolizers should get hold of it and make it of use.

Los Angeles Weekly Herald.

So far the irrigation bill has made good progress in the Assembly. It will be remembered by readers of the *Herald* that two bills of this kind had been introduced, but the one now referred to is that which was prepared by the Fresno Convention. On the introduction of this bill, the great advantages it possesses over the others were so manifest, that it was determined to let these two lie on the table. One of the main features of the bill is the doctrine that the common laws of England and of the United States concerning riparian rights should not be applicable in this State, and common sense would lead one giving sane attention to the matter to the same conclusion. On

Thursday last, and again on Friday, Assemblyman Walrath moved that the bill, which had been reported on favorably by the committee, be taken up out of order and read for the first time. His second motion was carried, and the bill was made a special order for to-day. The proceedings of the State Irrigation Convention, held at Fresno, which were reported at the time in these columns, are so well known to readers of this journal that it is not necessary now to do more than refer to them. That Convention was composed not of mere theorists, as some of those who went as Delegates to the Riverside Convention were, but in the main of gentlemen who discussed the question from a standpoint they have taken after many years of thorough practical acquaintance with irrigation in California, and what it can and should be made. Just as the meteorological phenomena of California, its climate and its various soils differ from those of other lands where irrigation is practiced, just so the law of riparian rights of other countries may very well be inapplicable to our State. At Fresno the whole subject received full consideration, and it is very reasonable to suppose that the bill under discussion as these lines are being written will become a law.

Tulare Register.

Assembly bill No. 410, amending Section 4488 of the Political Code of our State, so that the common law of England will no longer serve to bolster up the infamous riparian doctrine, has passed the Assembly by a vote of 50 to 14. It now goes to the Senate, with every prospect of becoming a statute law.

San Francisco Examiner.

Unfaithful Representatives.

The relation which San Francisco bears to the interior and the importance of the rapid and permanent development of the agricultural resources of the State to the advancement of the commercial interests of San Francisco gave promise that the legislative delegation from this city would yield a hearty support to any measures brought forward in the Legislature intending to enlarge the area and increase the value of cultivated land in the farming districts. It was not believed that members of the Legislature, elected to represent a great city, and expected to be active in support of all propositions calculated to multiply interior production, and correspondingly enlarge the city's trade, would be recreant to their duty. Nevertheless, the people of San Francisco have been disappointed in their anticipations. Wise measures were presented, having as their object the confirmation of the right to use the waters of the State for irrigation purposes. They were intended for the benefit of all. Their enactment could not fail to give a new impetus to the languishing farming interests of Southern California and thereby contribute to the welfare of the city, which is conceded to be chiefly dependent upon

the prosperity of the country. Two of the chosen representatives of the city in the Assembly, disregarding their duty to their constituency and casting aside all consideration of public interest engaged actively in the bitter warfare waged against the proposed irrigation measures. Assemblymen McJunkin and Firebaugh of San Francisco, fought and filibustered against these bills with all their feeble energies. They exercised their lungs and exhausted their ingenuity in their efforts against the interests of those whom they represent. Mr. McJunkin's biography up to the time he was called to represent San Francisco in the Legislature is not written in the annals of the State. Mr. Firebaugh has hitherto never emerged from the obscurity of private life. Mr. McJunkin claims to be a lawyer and in that disguise has shouted himself hoarse about the unconstitutionality of the irrigation bills, with Mr. Firebaugh as a distant echo of the same views. Their arguments have been so peurile that it is not worth while to answer them. But the people of this city ought not to forget the names of McJunkin and Firebaugh, lest they should some day again emerge from the obscurity to which their opposition to the irrigation bills has already condemned them. San Francisco is to be congratulated that the unfaithful in connection with this important matter have been few.

Marysville Democrat.

Too Late.

The Sacramento *Bee* and its sympathizers, after attacking the irrigationists and forcing the unnatural alliance of that class with the hydraulic miners, now begins to beg of those outraged members not to vote with the hydraulickers. After making a determined effort to ruin one of the most populous and fertile portions of the State, this same journal turns in the face of all this and asks those very men to vote for the interest of that section which outraged it. We have seldom seen anything quite so cheeky in the course of our life. We begged, we warned the *Bee* not to take the course it did, for we knew the *Appeal*, which cuts its trousers and trims its beard after the style the *Bee* wears, and its whole kit, would run off into this fatal mistake, and cut off all hope for this portion of the valley. There is nothing in common with the irrigationists and the objectionable features of hydraulic mining; and the alliance of their forces in the Legislature is all unnatural, and forced by the unmanly fight of those who are continually on the side of monopoly—the *Bee*, the *Appeal*, and others.

San Francisco Examiner.

A Delusion.

The Sacramento *Record-Union*, in its issue of yesterday, in an editorial entitled "Saddling Irrigation," declared that Assembly Bill No. 410, as amended by the Committee of the Whole in the Senate, should not become a law, be-

cause, as thus amended, the bill will reopen the "hydraulic mining question." That this is an entire misapprehension of the effect of the amendment is certain. The amendment proposed consists of the insertion of two words in Section 2 of the bill. This section as amended reads as follows, the amendment being given in italics:

"Section 2, Section 1422. That portion of the common law of England which relates to riparian rights is hereby declared to be repugnant to and inconsistent with the climate, topography, physical condition and necessities of the people of this State, and the laws thereof concerning the appropriation of water for purposes of irrigation [*and mining*], and to that extent to have never formed any part of such laws; and the use of water for said purposes of irrigation is a public use."

The *Record-Union* says of the amendment:

"There must be no irrigation bill passed saddled with such a rider as is now being put upon this bill. Whatever virtues the bill may have, the people of the Sacramento valley will never consent to a reopening of the hydraulic mining question. Better that the deserts remain unreclaimed and parched lands go unwatered than that the law be blotted out, which is to-day the safeguard of the people against the unnatural descent of mining debris and slickens, and which, if unchecked, would render the fertile regions along the Sacramento River uninhabitable and utterly destroy the navigability of the chief free highway of the State."

We must conclude from this that the *Record-Union* is either an enemy of the bill as it was passed by the Assembly, or is most egregiously mistaken as to the effect of the amendment. The section as amended declares that the right to appropriate water for *mining* is repugnant to and inconsistent with the common law of England relating to riparian rights. This declaration does not give the miners any rights which they have not now got.

The law of prior appropriation has always prevailed and now prevails in the mining regions of the State; but this right of appropriation does not, according to the decisions of the United States Courts, give the miner the right to deposit his debris in the streams to be carried down upon the farming lands below. It was contended before the courts in these cases that, because the miners had the recognized right to appropriate water for mining the right to deposit debris in the streams must follow therefrom, because such deposit resulted from the use of the water in mining. In other words, it was contended that the right to deposit debris in the streams followed by implication perhaps, might appropriate water, this did not give him the right to deposit from the right to appropriate the water; but the Courts held that while the miner, his debris in the streams. Judge Sawyer, in the case of *Woodruff vs. North Bloomfield Mining Company*, held that, even if a law had been passed expressly authorizing the deposit of mining debris into the navigable streams, such law would be invalid and void. Speaking of the power of Congress to pass such a law, Judge Sawyer said:

“But if Congress had attempted to authorize an unlimited discharge of mining debris into the navigable waters of the State, to the destruction of or great injury to their navigability, *it had not the power to render it lawful*.” (1 West Coast Rep. 201.)

And again, in speaking of the power of the State Legislature upon the subject, Judge Sawyer said:

“The State had no constitutional power to authorize the acts complained of, and any statute designed to effect that object is void.” (1 West Coast Rep. 209.)

It is obvious that the bill as amended does not expressly nor by implication give the right to deposit mining debris in the streams. It only deals with the right to *appropriate the water*.

Now, how does the amendment re-open the hydraulic mining question? What possible foundation is there for any such assertion? Why should any friend of irrigation refuse to vote for the bill because of this amendment?

The right to appropriate water for irrigation is denied; and although this bill gives this right, the *Record-Union* advises the friends of irrigation to vote against the bill because, as amended, it declares the right to appropriate water for mining. This is the only reason given, coupled with the assertion that the amendment re-opens “the hydraulic mining question.” If the amendment expressly declared the right of miners to flow their debris into the streams, it would not re-open the question, because it would be a void law, as Judge Sawyer has decided, and the friends of irrigation need not be concerned even if the amendment had such an object. The amendment would in that case be void, and confer no rights upon the miners with respect to the debris.

Senator Cross is reputed to be an able lawyer. He knows that the right of prior appropriation of water for mining has been recognized in this State since mining began; that this right has been uniformly, up to this time, upheld by the courts, both State and Federal; that before the United States had disposed of a single acre of mining land this right of prior appropriation was recognized by the ninth section of the Act of Congress of July 22, 1866, which declared:

“Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing or other purposes have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed.”

Senator Cross further knows that Congress, in the amendatory Act of July 9, 1870, declared that “all patents granted, or pre-emption, or homesteads allowed, shall be subject to any vested and accrued water-rights or rights to ditches or reservoirs used in connection with such water rights as may have been acquired under or recognized by the ninth section of the Act of which this Act is amendatory.”

It seems that Senator Cross' amendment has succeeded in stampeding the *Record-Union*, or else that paper is so desirous of defeating the bill in question that it is willing to raise misleading questions and issues.

San Francisco Chronicle.

Irrigation in the Senate.

It was only on Thursday that we expressed the somewhat confident hope that the Senate might pass the whole set of Fresno bills by Wednesday next. But on that very day the managers ran against another snag, and a backset followed. A vote on the bill, declaring what constitutes the common law in this State, resulted adversely, the irrigators only poling thirteen votes to seventeen for the opposition, while ten Senators refused to vote. There seems once more to have been bad management, and our correspondent reports that Green, of the Fresno committee, now despairs of passing the bills without an extra session.

Nothing can be more pitiable than the littleness of mind shown by the opponents of these measures. Each Senator looks at them only from the point of view of own little bailiwick, and seems unable to comprehend that legislation which will enrich the southern half of the State cannot fail to benefit every section thereof. Cross, of Nevada, for instance, comes from a mining county, and stands in the way of bills to promote agriculture in Fresno and Los Angeles, because Nevada does not seem to get her share. It ought to be plain enough to his mind that if agriculture takes a fresh start in the south and vast tracts of land are reclaimed by irrigation, there will be an increase of wealth, and new capital to develop all kinds of enterprises, including the mines of Nevada. There is not a section of the State, from Del Norte south, that would not share in the prosperity which irrigation will create. Yet, for the sake of some two-penny mining ditches in the Sierra, Cross and his allies stand in the path of the irrigators, and resort to dodge after dodge to defeat legislation—though, by so doing, they are cutting off their own noses.

After the action of the Senate on the Heath Constitutional amendment, no reasonable person will be surprised at anything that body may do. But there are degrees in public contempt. It has been claimed that a man may be a railway tool, yet otherwise worthy of respect. We confess we cannot see it in that light, but it is easy to understand that a Senator may intensify his unpopularity by following up one improper act by another and yet another. A man who has made himself distrusted by surrendering to the monopoly, may render himself perfectly odious by resisting the development of the southern counties. That is what the railway men, who are opposing irrigation, are now doing. They seem bent on proving to the public that they cannot be trusted on any subject.

A rumor has been current for some days that the chief friends of the railway are quietly opposing the irrigation bills. This would be curious, for no

one is more interested in the development of the southern counties than the owners of the Southern Pacific. But the railway managers often display so much cussedness and so little tact, that the thing is perhaps not impossible.

Alta California.

Strangling the Irrigation Bills.

Senator Cross of Nevada yesterday secured the passage of an amendment to the Wigginton Irrigation bill in the Senate, which, unless reconsidered, effectually strangles the bill for this session. The amendment has every appearance of being designed by the author to effect this result. The bill is amended so as now to declare that the common law of riparian rights is inconsistent with the appropriation of water for mining purposes, as well as for irrigation. The original bill omitted any mention of water for mining purposes. The people of Nevada county will not be deceived by the false pretense that this amendment is of any benefit to miners or mining. Nor need the people of the Sacramento Valley be alarmed at its possible effect upon their great channel of commerce, the Sacramento river. The legal effect of the amendment is not to extend the rights of miners, nor to authorize the renewal of hydraulic mining. Slickens can find neither encouragement nor protection under this provision. Senator Cross perhaps believed that he could win the miners' affections and drive the anti-debris men from the support of the bill, and thus defeat it. As amended, he favors its passage, but he must know it cannot pass. To become a law, it should pass as it came from the Assembly. To return it to the Assembly in time for passage is almost impossible, because the end of the session is so near. Even if this amendment were intended to revive the system of mining which the courts have enjoined, it could not effect its purpose. The Supreme Court of this State has not only put an end to the deposit of debris over the Sacramento Valley, but declared in the most emphatic and positive terms that not even legislation, either State or National, can revive it. In the Gold Run debris case, the State Supreme Court says that "neither State nor Federal legislation could by silent acquiescence, or by attempted legislation, take private property for private use, nor divest the people of the State of their rights in the navigable waters of the State, for the use of private business, however extensive or long continued;" and in speaking of the rights of the people to the use of the navigable rivers, says: "It is therefore beyond the power of Legislatures to destroy or abridge such rights, or to authorize their improvement." All but the wilfully blind can see that this decision raises an impregnable fortress against any legislative invasion of the navigability of the Sacramento and San Joaquin by slickens or otherwise. In the Woodruff case, the Federal Court re-enforces the State Court in establishing this unchangeable rule of law.

Aside from this, it is absurd to attempt to extract from this amendment any comfort for the hydraulic miner. As the amended bill reads, it declares the law of appropriation to be paramount to the common law, and that the doc-

trine of riparian rights shall not be applied to the use of water for mining purposes any more than to its use for irrigation. It proposes to give to the miner a right which he already possesses, and which he has always enjoyed in the mining sections of the State, the right to divert the water of natural streams and use the same for mining—a right which the Federal and State Courts have always conceded, in disregard of all riparian rights. The prevailing opinion in the latest water case decided drew the distinction between the right of appropriation of water in mining and agricultural districts, which, by necessary inference, admits the right in mining districts while denying the right in the agricultural districts.

Senator Cross was at one time supposed to be friendly to irrigation measures; but either the supposition was mistaken or he has experienced a change of heart. He is said to be willing to support the bill with his amendment tacked to it. His accurate knowledge of the law cannot but teach him that his amendment has no legal force and will add nothing new to the law of water rights. His amendment is fatal to the passage of the bill, and if it fails he cannot escape the responsibility of its defeat.

Merced Star.

Irrigation Meeting.

Last week a petition, brought here by a West Sider ostensibly in the interest of irrigators, was circulated in town and signed by many of our citizens who at the time were under the impression that the petition was as represented "in furtherance of bills pending before the Legislature to promote irrigation interests as enunciated by the Fresno Convention." The petition as delivered at Sacramento proved to be a remonstrance against the passage of the popular irrigation bills and declared the sentiment of the signers to be in favor of Riparian Rights as it is claimed they exist now. On Saturday, W. L. Ashe received a letter from Senator Spencer inquiring how and why Merced County was directly opposed to any extension of the existing rights of appropriators of water for agricultural purposes, and announcing his surprise at receiving such a petition from Merced. Spencer's letter soon became a subject of general discussion all over the town, and placards were soon posted announcing a public meeting at Leeker's Hall on Monday forenoon for the purpose of ascertaining the true public sentiment of Merced on the subject of irrigation and rights of individual irrigators. The placards were generally distributed in the vicinity of this town, and on Monday a well-attended representative meeting was convened at Leeker's Hall.

On motion of W. L. Ashe, Captain Gray was chosen Chairman and H. H. McCloskey as Secretary. After a discussion of the importance of irrigation facilities to the people of Merced County, and the possible consequences of the unrepresentative petition improvidently signed by our citizens under a positive misapprehension of its meaning, a committee was appointed by the Chair to draft resolutions expressive of the true sentiment of the meeting. This

committee consisted of G. H. Fancher, H. N. Rucker, R. H. Ward, W. L. Ashe, H. H. McCloskey and W. W. Gray. After adjournment the meeting reconvened at 2 p. m., and the following resolutions were presented by the committee and discussed and approved by the meeting.

WHEREAS, It has been brought to the attention of the citizens of Merced County that a petition has been presented from this county to the Legislature of California for the avowed purpose of misleading its members as to the wants of the people of this county on the subject of irrigation. Therefore be it

Resolved, That we, the people of Merced County, in mass meeting assembled do hereby declare that any attempt to mislead our Representatives or others into the belief that we, as a county are opposed to irrigation, is unfair and unjust.

Resolved, That we highly deprecate the unfair manner in which many of our citizens were led to sign the petition referred to and unite with them in saying it was done under misapprehension.

Resolved, That we heartily indorse Senate Bill 210 and Assembly Bill 410, and ask for their immediate passage.

Resolved, That a copy of these resolutions be sent to each of our Representatives, Hon. J. D. Spencer and Hon. G. G. Goucher.

G. H. FANCHER, Chairman,
H. H. McCLOSKEY, Secretary.

After a very intelligent discussion and exposition of the situation and interest of Merced County in the general use of the abundant waters of the mountain snowfields unrestricted by the greed and injustice of possible riparian owners, a committee of three were appointed to present the resolutions of the meeting to the Legislature in person, and to urge our representatives to vote and work for such bills as will most fully promote the interests of the irrigators of the San Joaquin Valley in general and the present and possible irrigators of Merced County in particular. W. W. Gray, C. Landrum and W. L. Ashe compose the committee. The resolutions of the meeting were ordered telegraphed to Sacramento.

San Francisco Post.

The True Inwardness.

From present indications the failure of the irrigation bills seems probable, unless the session of the Legislature is prolonged. If the Senate would have passed the bills as they came from the Assembly, there was still time for the work. The amendment offered by Senator Cross and adopted in Committee of the Whole, to make Assembly bill 410 apply to water for the use of mining, as well as for irrigation, will necessitate the return of the bill to the Assembly. The time is too short for this, and the only effect of the amendment is to kill the bill. The amendment was never offered in good faith. Senator

Cross has been conspicuous in his enmity to the irrigation bills. He is an able lawyer, and well knew that his amendments were useless, except for obstruction. He knows that his amendment will not change the law as it now stands, nor confer on the northern or mining section of the State any privilege which they cannot now exercise with unrestrained freedom. The people of northern California have to-day the common and unrestricted right to appropriate the waters of their streams and divert them for either mining or agricultural purposes. That right has been fully and unreservedly confirmed by the Act of Congress of 1866, and by all the decisions of both State and Federal Courts. The riparian doctrine never has been applied to that section. The very latest case by our Supreme Court recognizes without hesitation the rights of miners and ditch owners in mining regions to appropriate and divert water. We quote from the case of *Lux vs. Haggin*:

“When the law declares that the riparian proprietor is entitled to have the waters of a stream flow in its natural channel, without diminution or alteration, it does so because its flow imparts fertility to his land, and because water in its pure state is indispensable for domestic uses. But this rule is not applicable to miners and ditch owners, simply because the conditions upon which it is founded do not exist in their case.”

The Court then goes on to say that the conditions upon which the rule is founded do exist in agricultural districts. Here, then, is the law. The Court in the same breath gives Southern California the riparian law and northern California the doctrine of appropriation. And it must not be forgotten that the riparian padlock is taken off the northern streams with no limitation. Whether for irrigation or for mining, the water is free for all. Southern California discovered this state of the law, from the decision quoted, and came begging to the Legislature to be placed on an equality with the north, and is met with refusal at the hands of a northern Senator. What is the use of re-enacting what is already law?

In itself the amendment of Senator Cross is harmless. It does not touch the debris question. In Judge Sawyer's decision in the Woodruff case there was no question of riparian rights involved. The destruction of property by the deposit of debris, without regard to the locus of the property, whether on or remote from the banks of the river, is there held to be unlawful. The miners are not forbidden to appropriate water. They are enjoined from so using it as to destroy the navigation of the river and cause injury to property wherever it lies. These two propositions that the Cross amendment gives no new right, and has no effect upon the debris problem, point to the conclusion that Senator Cross has deliberately enlisted himself under the riparian banner, and that, under his leadership, irrigation in Southern California has received its death-blow.

San Francisco Post.

Thirsty Lands.

“Wherever water can be elevated, the land [Nile Valley] exhibits wonderful fertility; and the amount of labor expended upon merely lifting water to the highest attainable level, by means of the most primitive machines, is absolutely prodigious as well as continual, for a few hours' intermission would result in the burning up of the crop. At the line where the irrigating waters halt the desert begins, and its limit is as sharply marked as a gravel walk across a greensward.”—*General Colston, in Century.*

Professor Langley has prophesied great things for those desert lands which are merely infertile from being dry, of which the San Joaquin Valley—a region, by the way, about the size of Egypt—is a fine example. The difference between desert and garden, between a howling wilderness and a populous region, is one of water plus some means of raising it (in countries where the riparianists do not bar the way, as they do in California). This means is to be the solar engine—run by the sun's heat—one of which, the invention of Ericsson, is now at work in New York. This is a vision of the near future. We can imagine the farmer in Southern California, instead of waiting anxiously for the inch or so of rain which may come or not come, looking at the thermometer while it climbs above the hundred mark, with the comforting thought that his irrigating is being done by steam that costs nothing, made by a fire that never goes out. Then shall those heated lands having the greatest need have also the greatest water supply. Then shall the desert of Sahara vanish, as did the “great American desert” years ago, and the place thereof shall know it no more, and the melancholy *shadoof* shall no longer moan for the ceaseless labor of the *fellah* who dips its bucket in the Nile. Meanwhile, it is just as well to settle this riparian business according to principles of common sense—just in anticipation the coming sun engines. The common law has been called “the perfection of common sense”—that is, in England. California should be a law unto herself.

 Watsonville Pajoronian.

The Assembly has passed the Fresno irrigation bills, three in number. To correct a false impression that is prevailing, we will state that Mr. Heath voted for all of them. These bills passed the Assembly in good shape, but the Senate is almost equally divided on the irrigation question.

It seems strange that men who are anxious to make records as anti-monopolists on the land and railroad questions, should strongly favor riparian rights, thus acting to the detriment of [thousands of settlers in the San Joaquin and southern valleys.

Los Angeles Times.

A Great Irrigation Scheme.

The project of bringing out the water of Rock Creek on to Wild Horse Prairie, as suggested in the *Herald* last summer seems to be in a fair way of accomplishment. Mr. M. L. Wicks, the most utterly tireless gentleman in Los Angeles, is already at work carrying forward this great work with great and intelligent energy. He is constructing a ditch eight miles in length that will water 4,000 acres of excellent land in summer, while in winter, which is the best time for irrigating vines and trees, there is water enough to irrigate 20,000 acres. The project is brave, bold and important and will be crowned with success.

The land that has been selling at \$6 per acre without water privileges in that vicinity will be sold at \$10 per acre with water right. This will make about \$40 for an inch of water. Since that amount of water at Ontario, Pomona and Riverside is considered worth \$1,000, the difference is largely in favor of Mr. Wicks and his highland prairie, which is nearly 3,000 feet above the city of the Angels.

This location is admirable for growing cattle and hogs, barley, buckwheat, corn, beans, peas and all kinds of deciduous fruits. That part of Los Angeles county is shooting ahead at a tremendous rate and still with increasing velocity,

Modesto News.

Irrigation.

At Merced, a few days ago, the people of Merced county gave expression to their opinion on the question of irrigation by the adoption of the following resolutions:

WHEREAS, It has been brought to the attention of the citizens of Merced county that a petition has been presented from this county to the Legislature of California, for the avowed purpose of misleading its members as to the wants of this county on the subject of irrigation; therefore be it

Resolved, That we, the people of this county, in mass meeting assembled, do hereby declare that any attempts to mislead our representatives or others into the belief that we as a county are opposed to irrigation, is unfair and unjust.

Resolved, That we highly deprecate the unfair manner in which many of our citizens were induced to sign the petition referred to and unite with them in saying that it was done under a misapprehension.

Resolved, That we heartily indorse Senate Bill No. 210, and Assembly Bill No. 410, and ask for their immediate passage.

Resolved, That a copy of these resolutions be sent to each of our representatives—Hon. J. D. Spencer and Hon. G. G. Goucher.

The above resolutions were unanimously adopted and a committee, consisting of W. L. Ashe, W. H. Hartley and C. Landrum was selected to go to

Sacramento on behalf of the people of Merced county, in the interest of the bill. Senator Spencer, of Stanislaus, and Assemblyman Goucher, of Mariposa, presented the resolutions to their respective Houses. The resolutions speak for themselves.

Fresno Expositor.

If the Senate fails to do its duty relative to the passage of the irrigation bills, it will not be for want of knowledge or light on the subject. The leading San Francisco papers have labored nobly in behalf of the people, and have published column after column, covering the whole subject involved. The *Post* of last Saturday had an excellent article, full of truth and point. The *Chronicle* has given the subject repeated attention, and has frequently called the attention of the Legislature to its duty in the premises. The *Alta* has labored earnestly ever since the meeting of the Fresno Convention, and was the first paper in the city that properly comprehended the situation, while the *Examiner* has thrown the whole weight of its great influence in behalf of the irrigators. In its issue of yesterday it had an especially able and pointed article on the subject. The irrigators will not forget their friends, who have rallied to their support in this their time of need.

Petaluma Courier.

The Irrigation Question.

The irrigation bill has passed the Assembly by the handsome vote of fifty-one for, and sixteen against it. Legislation upon the irrigation question is the most important, considering the interests involved, of this session. The old common law doctrine of riparian rights has to be reversed, and the main principle of all sound law, of the greatest good to the greatest number, control legislation. God Almighty located the waters, not for the exclusive benefit or control of the few right along the banks of the streams, but intended them for the use of the great mass of the people, and the large districts of country between them as well. A few men might as well claim the air and light where it is possible to control them as the water. In fact they might as well claim that being first settlers they have a right to exclude anybody else from the country where they live, because it might interfere with privileges first claimed by them. The necessities of the great mass of the people and the general welfare of the State should be considered in discussing this water question, as well as the rights of the few first riparian locators.

Los Angeles Express.

The Sacramento *Bee*, level-headed upon most subjects, has discussed "slickens" so much that it is inclined to fly off the handle whenever anything comes to the surface which can in any way be construed to affect it.

By some incomprehensible course of reasoning it construes the irrigation measures now before the Legislature to be in the interest of the hydraulic miners, and is therefore fighting them as hard as it can. We cannot see that there is any justification for this association. The objection has never been made to the hydraulic miners that they consumed too much water; it has been that they dumped their tailings into the rivers and filled them up. They are now prohibited from dumping their tailings in the rivers, and virtually from pursuing the business of hydraulic mining at all. Drift miners, however, require water, and so do quartz miners. It is not contended that either drift mining or quartz mining does any damage to the streams. Why, then, should there be any objection to their obtaining as much water as they require through legal methods, and why should not the legal methods be the same to the miners as to their modest requirements as to other classes of water consumers? In cases where there are no real conflicts of interest, it appears to us to be bad policy to construct such conflicts artificially. If the owners of the land along running streams are the exclusive owners of the water, of course the interests of miners and agriculturists in the back countries must all die together. Is that the end to which the *Bee* is directing its efforts?

Modesto Republican.

“So Say We All of Us.”

“We hope that a roll-call on the irrigation measures will soon be obtained in the State Senate. We want a list of the men who are ready to fall down before the Bull of Basham or Golden Calf of the cattle kings. We want a record of those recreant representatives for future reference. We want to watch them closely, and every time one sticks his head up for office we want to hit it. The people of the State demand the passage of suitable irrigation laws, and those who oppose the bills now pending are defying the will of their masters—the people.—*Fresno Expositor*.”

We concur, and we don't want to hit their heads with a stuffed club, either, but with a two-ton pile driver hammer, and drive them so deep into the ground that the sound of Gabriel's trumpet on the resurrection morn will not reach them.

Lux & Miller are the great riparian claimants in this valley, and according to their own showing are robbing other riparian claimants on the San Joaquin river. There are older settlers on the banks of the river than Miller & Lux, and their lands are located below the point where they tap the stream. Now, suppose those riparian proprietors should take a notion into their heads to ask Messrs. Miller & Lux to swallow some of their own medicine, what then?

Sacramento Sunday Capital.

A Dangerous Amendment.

An effort is being made to amend Senate bill 210 declaring against riparian rights, or the English common law. Our Supreme Court has shown a disposition to sustain confining the water of the flowing streams to the natural channels and preventing its use in this State for the most necessary purposes, by a proviso giving to riparian proprietors the right to flow past their premises of sufficient water for stock and domestic purposes. This seems so fair and reasonable on its face that it has inclined many legislators, unacquainted through personal knowledge and experience with the questions involved in this momentous subject of irrigation, to look upon it with favor. But we assert that this apparently fair and reasonable provision in its practical effect would nullify all irrigation legislation, effectually check the prosperity of the southern part of the State and cause it to retrograde in the path of progress as fast as it has hitherto advanced. To make this clear we set out by stating a fact familiar to every resident of that section, or any other arid country, that the largest end of every stream is upward, and the little end downward; or, in other words, while the streams issue from the mountains bold and strong they grow rapidly smaller as they advance into the dry plains until, except in flood times, by evaporation and absorption, they sink and disappear altogether. A few miles beyond these points of disappearance, where the floods reach, spread over extensive tracts and make swamps, are the lands of the riparians—swamp lands so-called, for which they have obtained title from the State by the construction of drainage works, or levees to prevent overflow—the men who are opposing the irrigation bills now before the Legislature. They hope, through the absurd law referred to, to practically own all these streams and hold all the vast interests above them at their mercy. This they now see they cannot hope to accomplish on the bare monstrous proposition involved in the common law, and hence this amendment giving them more than they could have if never a drop of water had been diverted above them. It was only in flood time, in the unchanged natural conditions, that water reached them at all, and then came a superabundance forming lakes and ponds lasting all the season, while in the normal stages of the streams they disappeared miles before they reached the lands that in flood time they submerged. What is the effect then of this amendment? Is it not to give these alleged riparians all they could get under the broadest construction of the common law? To give them water for stock and domestic purposes, when the streams are not in flood, and water is most needed for irrigation, would be to compel every drop to remain in the channels to sink in the sands long before it reached their lands, giving them power to levy tribute on the agricultural interests above them in millions of dollars annually. Besides all these riparians—cattle men—have long since found that the stagnant alkaline water festering in ponds, sloughs and tule swamps, under the burning sun of the dry season, is injurious to their stock and have substituted with infinite pecuniary

advantage, the cold, pure water of artesian and other wells, which is found in abundance near the surface. The irrigation bills provide for the payment to them of all damage that may result from the diversion of water above them which must in time again reach them more permanently by percolation, as we have elsewhere shown; but with this, which would satisfy all men in every other walk of life actuated by the ordinary considerations of interest and business, they are not satisfied. And this being so, in the light of the plain truthful relation of facts given above, what are we to think? It is impossible to view it in any other light than that they are striving (to put it in the mildest form) to effect a huge speculation, in violation of justice, right and public policy. More plainly speaking, they are using an imaginary advantage as Shylock did. The payment of their bond is not enough; a dozen men at most insist upon being given the power to draw the life blood from the fairest agricultural region of the State. They scorn the money value of their claims. They want the blood and life of those over whom they imagine the law gives them an advantage. Hopeless of having this openly confirmed they have resorted to insidious methods, trusting that they may thus grasp the prize they cannot gain openly. It should be borne in mind that in taking away and paying these men for their alleged riparian rights, the same rights still remain to them that are common to all. They may become appropriators of water connecting with the irrigating systems above them so as to convey water with as little waste as possible, and in the seasons of overflow they will still have, the only time they ever had it, more water than they want.

Alta California.

The Fresno Convention Bills.

The address of the Legislative Committee of the State Irrigation Convention, just issued, has been laid before the Legislature and the people. It is a calm and temperate, but strong appeal in behalf of the proposed irrigation legislation now under consideration. In an appendix to the pamphlet containing the printed address is to be found a reprint of articles from the press of every portion of the State, endorsing and advocating the pending irrigation bills. The Committee, comprising J. De Barth Shorb, Chairman, and J. F. Wharton, W. S. Green (of the *Colusa Sun*), R. Hudnut, H. S. Dixon, L. B. Ruggles, E. H. Tucker, and D. K. Zumwalt, are all gentlemen of ability and intelligence, united to an extensive knowledge, practical and theoretical, of the necessities of the State, the utilization of water for irrigation, and the benefits thereby accruing to the people. In concluding their address, the Committee says:

“We submit to your good judgment that the representatives of the people have also good right to declare by statute the fact that the portion of the common law of England, relating to riparian rights, as expounded by the Courts, is repugnant to and inconsistent with the climate, topography and physical

condition of the State and the necessities of the people thereof, and the laws thereof concerning the appropriation of water for purposes of irrigation. In future water litigation the Supreme Court may accept it, or they may reject it, as binding authority, so far as the past is concerned. Or they may consider it as evidence of the fact, although not conclusive. But with the added clause, 'and to what extent form no part of such laws,' it will govern their decisions in controversies arising over rights hereafter to be acquired. We shall have no new riparian owners to put stumbling blocks in the way of irrigation."

This answers the objection made to the constitutionality of the second section of the Wigginton bill, which contains the declaration against the riparian doctrine of the common law. It is maintained by eminent constitutional lawyers that all so-called riparian rights can be legislated out of existence without even compensation. There is no doubt but that the Legislature should act to the very fullest extent of its constitutional powers in favor of irrigation. If this second section of the Wigginton bill exceeds those powers, to that extent the Courts will annul it. Whatever benefit may result to the people from its enactment should not be lost. If this section is wholly constitutional, or constitutional only to a limited extent, give the Courts an opportunity to so declare. Following it comes the section providing for condemnation and compensation, which is inserted, not as a legislative recognition that a riparian owner has any rights, but to establish a mode by which such rights may be made subservient to the necessities of irrigation, in the event that the Courts shall hereafter determine that riparian rights have a place in the jurisprudence of the State. The presentation of the address comes opportunely, at a moment when, reduced to a last extremity, the riparianists have engaged in an abortive attempt to enlist the Republican party in its cause. The results of the riparian efforts in this direction have not been successful outside of the Republican State Central Committee. Such good friends of irrigation as Senator McClure and others are not to be dragged into deserting the people's cause, and ignoring the necessities and wants of a million people at the instigation of a few moneyed swamp-land monopolists, nor even at the solicitation of narrow-minded party managers.

Daily Post.

Riparian Wrongs—The Water of the State Belongs to the Beneficial Users—A Clear Exposition of the Fallacy of "Riparian Rights"—The Facts, the Law and Common Justice All in Favor of the Appropriators.

Riparian rights are public wrongs.

The doctrine of paramount ownership of water in rivers by riparian owners is not founded upon right at all, but was an English expedient for settling a maze of difficulties which do not exist and cannot exist in any part of America.

Riparian ownership of water is not founded upon right. If that can be demonstrated, down falls at once all the gorgeous superstructure of "divinely ordered inheritance," "alienable right," "vested right," "the God sent law that water should pass untouched from the hills to the ocean," and all the bogus assumption of superior power with which the riparianists have surrounded their position. All this assumption is nothing but the beating to tomtoms the slow music, the solemn mummery with which the beneficiaries of a Druidical mystery befog the understanding of their dupes. The trouble is the riparianists have asserted their rights so long that they have got to believe in them. They start out with false premises. Their opponents answer their argument, but fail to cut at the root of the evil and attack the premises. The irrigators argue about expediency, public necessity, and in some sort of shadowy way admit that the riparian owners have rights. It is not so; the irrigators have all the reason on their side, and the riparian owners nothing but a bald assumption of right.

The theory, doctrine and law of riparian ownership sprang from a state of affairs peculiar to England. At a time when there was no law on the subject of ownership in right in running water, disputes arose, which the Courts were called upon to settle.

THE SITUATION IN ENGLAND.

The courts looked abroad and took a birdseye view of the situation. They saw a small territory with a surplus of water and a scarcity of means of transportation and motive power. They saw a country with an annual rainfall of 80 inches or more, in which the hay and grain were ruined by rain one season in three. They did not fail to note that the water courses of the country were pre-eminently useful for the purposes. First, as a means to transport the products of the country to the seaboard, and second, to furnish power to grind corn. There were no railways in those days, and the only competitor of the schooner and barge was the huge, clumsy farm wagon. There was no steam in those days, and the only way to grind corn was by windmills, which even now dot the thousand hills of England, or by huge water wheels on the banks of running streams. During many weeks in each year the wind does not blow, and so the water wheel was the only available power. On the other hand, the courts saw a few men who desired to obstruct navigation by erecting low bridges or monopolizing water power by damming the headwaters of streams, to the injury and exclusion of mill owners below them. The courts did not see any thirsty plains waiting for the coming gladness of irrigation. So they said it is *wise and expedient* to conserve our rivers for navigation and for water power. That is the course which will bring the greatest good to the greatest number, and that is the course we will adopt.

FOR THE PUBLIC GOOD.

Nothing about "God-given rights," "inalienable inheritance" or "superior position" in that decision; but simply the plain, homely doctrine—now called

the American doctrine—that the interests of the majority must rule unsettled points. The English judges were wise, and had great foresight. They rightly divined where the greatest good lay, and, under the doctrine of riparian rights, streams and water courses have been saved and improved, till to-day, there is no single spot in all England more than fifteen miles distant from water communication. But the law they made—for no such law existed before they made it—was a hard, fast and rigid law. It said: “You shall not touch the water if your neighbor below you does not want you to; and your neighbor below is any one on the banks of the stream, down to the very outlet. You shall not diminish the flow of the water. You may run a wheel with it, but the water must be sent back into the river. We have for expediency established this doctrine of undiminished flow, and there can be no departure from it.

This doctrine was carried out to a ridiculous point. A man sued his neighbor for diminishing a watercourse, and asked for damages. The courts ruled that the man who has a homestead or park upon a watercourse can forever condemn that water to idleness and disuse at his own pleasure, no matter at what cost to public convenience, because he has a right to listen to its music as it flows and to delight his eyes with the sight of it as it dances by his land.

THE SENTIMENTAL HUMBUG.

There is the effect of the riparian rights in clear, vivid phrasing, that it would be hard to improve upon. The man who owns a foot of land at the mouth of the San Joaquin river can say to every man who needs water from the San Joaquin, the Stanislaus, the Merced river and all tributaries: “Touch not the waters of your streams, for I wish to delight my eyes with a full and complete flow as it dances by and my ears must be tickled with the music of its muddy splash to the uttermost tinkle.”

Such a doctrine may please a nation of dilettante—a country of sylvan sentimentalists; but, even were it good law, and based on right, it would never be allowed to stand before the robust common sense of California and the needs of her people. But it is not law. No man has a right to the uninterrupted use of another's property, and the water which rises in the Sierra Nevada is not the property of the man at the mouth of the San Joaquin. That water reaches the mouth of a river is only because of the neglect or inability of the dwellers higher up the river to appropriate it. The man at the mouth takes advantage of his neighbor's neglect, lack of desire, or lack of ability to use their property, but it would be absurd to hold that such neglect gives him title. As well might A say that because B has allowed him to ride his horses for years, he has a title to the horses, or an easement in them.

All water is first the property of the man upon whose land it falls, and if he fails to use it, it vests in the State—is public property and open to public use the same as the public air. How utterly contemptible, how silly, does the riparianist's theory of ownership appear when placed by the side of the only true principle, that the water is primarily the property of the man on whose

land it falls, or, failing him, that it is a public element. Will any one deny that first title to water rests in the man on whose land it falls?

A TEST OF THE DOCTRINE.

Perhaps some riparianist may; so we apply the test. A digs a pond on his land into which rain falls. B complains that the flow of water in the creek on whose banks he owns land is diminished by the pond of A. There is no law which will listen to such a complaint. But if the complaint was that A had obstructed the flow of a stream, the case would be different, for A not being able to show that the water fell on his land, has to fall back on his proposition as an appropriator of public property.

If the man upon whose land the water falls fails to use it, then it becomes one of the elements for the use of the general public under regulations for its distribution.

Blackstone has this to say about the use of the element: "Thus, too, the benefits of the elements, the light, air and water can only be appropriated by *occupancy*." And in another place the grand old law expounder says: "He who first applies the elements to a beneficial use has the right." Nothing in that about sentimental use. No plash of murmuring brooks, or glittering gleams of sunlight on the rippling stream. A man can only own water by using it for a beneficial purpose, and he who first connects his labor with the public element has the better title.

Occupancy alone can constitute ownership in an element. The riparianists are not occupiers. Listening to the plash of the water, or fishing off the end of a wharf, or allowing one's cattle to slake their thirst in the stream or fatten on marsh grass, does not constitute occupancy nor give title, and even if they did, it would only be title in default of a better one, and it would not hold as against a better title. The main point is that the water is the property of the State, open for beneficial occupancy, under the rule which applies to the public land—"first come, first served, but only a reasonable amount for any one."

THE CASE IN A NUTSHELL.

It matters not what rules prevail in England, Spain, or Timbuctoo, or what construction the courts have placed on the law as it now stands. The State owns the water, and after conserving the two navigable rivers will allow the remainder to be appropriated for irrigation or mining ditches. The riparian owners cannot even set up the claim of prior right. In 1846 the appropriation of water for mining ditches began in a small way and in a year numbers of ditches had been built. The Nevada Water Company located in 1850, Bear River 1851, Bicknell Ditch 1851, Todd Valley 1851, Dixon's 1851, Natoma Co. 1852, Grass Valley 1852, Kilham's 1852, Humphrey's 1852, Mokelumne Hill 1852, and so forth. And the rights of all those ditch owners have been confirmed by the highest court in the land. To carry out the doctrine of riparian rights means that at the instance of any owner of a foot of swamp land below them, these ditches, which cost millions, can be destroyed.

Not only is the doctrine of riparian rights founded on so flimsy a base as "English expediences," but it is absurd. It is illogical. In effect, it means that no one shall use the water. Chief Justice Shaw showed this in the following terse language: "If the plaintiff could, in a case like the present, have such an action, then every proprietor on the brook, from its source to its outlet, will have the same, and so on to the ocean, and because none might diminish the flow the rights of all would amount to nothing, as none could put the water to any use."

Having established the State's right to the water, subject to appropriation, the case presents no formidable difficulties to statesmen. It is simply necessary to formulate some rule, deciding how much an appropriator may take, and defining the method of legal appropriation. It is of no use wasting time discussing the rights of riparianists. They have no rights in this cause. If they want to use water, they must be made to take it on the same terms as other citizens, and not expect to own a river because they live on its banks.

San Francisco Examiner.

Irrigation—Its Importance to the State and San Francisco.

To the Editor of the Examiner—SIR: More than thirty years have passed since the waters of our streams first began to be appropriated, diverted and applied to the cultivation of the soil by irrigation. The early settlers who abandoned the pick and shovel for the plow watered their few acres of barley and vegetables through small flumes and ditches conducting water from neighboring streams. Immigration poured in rapidly, population increased enormously, and after the example of the first comers it came to be the universal custom to take the water of the stream for irrigation. Natural justice led to the adoption, by mutual consent between the appropriators, of the rule that the prior appropriator has the better right to the extent of his actual diversion for a useful purpose. This rule became universally recognized, and was adopted and enforced by the Courts. It rested upon that most solid of the foundations of the law—the wish and consent of the governed. It became the *common law of California*. Under its supposed protection capital and labor, energy and enterprise were embarked in the development of the agricultural resources of the State. Year after year has witnessed the increasing appropriation of water for the irrigation of arable land. Probably one-third of the population of the State is now *directly* interested in irrigation. Very few are there who are not interested either directly or indirectly. All have proceeded upon the theory that the appropriation of water gave an *absolute right* as against all the world. For over thirty years it never entered into the wildest dreams of the owner of land upon the banks of a stream that he had any rights whatever against an appropriator of water from the same stream, other than what he himself might have acquired by actual appropriation. And now, after all these years, when the magnitude and in-

creasing importance of irrigation interests and the approaching necessity for careful and economical distribution of water for irrigation and mining have made the time ripe for legislative regulation, the river-bank owner awakens from his thirty years' sleep and undertakes to tell us that there is nothing to regulate; that appropriators have no rights and never had any; that irrigation is robbery, and irrigators are highwaymen.

That is the long and short of the riparianists' argument before the irrigation committees of the Legislature, against legislation. They say that we have adopted the common law of England, that the owner of land through which a stream passes has a right to have the stream flow in its natural state, without diminution or alteration.

The States of the Union have accepted the common law only so far as it is applicable to our wants, necessities, circumstances and conditions. This principle is established by a unanimous and undisturbed line of authorities, running through the reports of the highest Courts of the United States, and of nearly every State in the Union. The following quotations from able Courts and eminent Judges are the basis for the assertion of this proposition :

In *Parker vs. Foote*, 19 Wend., N. Y., p. 318, Justice Bronson in delivering the opinion of the Court (of which Samuel Nelson, afterward elevated to the Supreme Court of the United States, concurring) says: "It cannot be necessary to cite cases to prove that those portions of the common law of England which are hostile to the spirit of our institutions, or which are not adapted to the existing state of things in this country, form no part of our law."

In *Keats vs. Hugo*, 115 Mass., 208, Chief Justice Gray, now on the United States Supreme bench, approved and followed Justices Bronson and Nelson in molding the common law to the existing state of things in the United States and not applying it to our growing cities, were working the most mischievous consequences, and cites decisions in Maine, North Carolina, Maryland, Pennsylvania, Vermont, Alabama and Ohio, based upon similar reasons.

Justice Lyman Trumbull, illustrious as a statesman and jurist, held the same views in *Seely vs. Peters*, 10 Illinois, 142. In *Coffin vs. Ditch Company*, 6 Colorado, 446, the Court say: "It is contended that the common law principles of riparian proprietorship prevailed in Colorado until 1876, and that the doctrine of priority of right to water by priority of appropriation thereof was first recognized and adopted in the Constitution. But we think the latter doctrine has existed since the date of the earliest appropriations of water within the boundaries of the State. The climate is dry, and the soil, when moistened only by the usual rainfall, is arid and unproductive; except in a few favored sections, artificial irrigation for agriculture is an absolute necessity. Water in the various streams thus acquires a value unknown in moister climates. Instead of being a mere incident to the soil, it rises, when appropriated, to the dignity of a distinct usufructuary estate or

right of property. It has always been the policy of the National, as well as the Territorial and State Governments, to encourage the diversion and use of water for agriculture; and vast expenditures of time and money have been made in reclaiming and fertilizing by irrigation portions of our unproductive territory. Houses have been built, permanent improvements made, the soil has been cultivated, and thousands of acres have been rendered immensely valuable, with the understanding that appropriations of water would be protected. Deny the doctrine of priority or superiority of right by priority of appropriation and a great part of the value of all this property is at once destroyed. * * * We conclude, then, that the common law doctrine, giving the riparian owner a right to the flow of water in its natural channel upon and over his lands, even though he makes no beneficial use thereof, is inapplicable to Colorado. Imperative necessity, unknown to the countries which gave it birth, compels the recognition of another doctrine in conflict therewith.

In *Acheson vs. Peterson*, 20 Wallace, 507,¹ the Supreme Court of the United States say:

“As respects the use of water for mining purposes, the doctrine of the common law declaratory of the rights of riparian owners were at an early day after the discovery of gold found to be inapplicable, or applicable only in a very limited extent, to the necessity of miners, and inadequate to their production.”

In *Basey vs. Gallagher*, 20 Wallace, 670, the same Court say that the views expressed and the rulings made in *Acheson vs. Peterson* “are equally applicable to the use of water on the public lands for purposes of irrigation. No distinction is made in those States and Territories by the customs of miners and settlers or by the Courts in the rights of the first appropriator from the use made of water, if the use be a beneficial one.”

It is safe to say that the highest Courts of the United States, and of nearly every state in the Union, have held it to be their duty to modify, or refuse to apply, the common law of England, where it was unsuited to the necessities and circumstances of the community or locality. The Courts of England have modified or cast aside parts of the common law where they have found them unsuited to modern emergencies.

Are our necessities and conditions such that we should have accepted the riparian doctrine with the rest of the common law? Is it consistent with our climate, the physical conditions of the State, the necessities of the people, and the customs and usages of more than thirty years, to say that a stream shall flow from its source to its mouth without diminution? Nothing is more certainly established, beyond peradventure, than that irrigation is a necessity throughout the southern part of the State, and in many of the northern portions. In the south the rainfall is so slight, the climate so dry and the heat of the sun so intense that the melting snows of the Sierras bring, in truth, the water of life to vegetation in the valleys. Prior to the introduction

of irrigation many parts of the plains of the San Joaquin were barren wastes. There is no article of food for either man or beast which can be raised without irrigation. Oranges, grapes, almonds, wheat, corn, alfalfa, all live and thrive by the water from streams rising in the mountains. Farms or vineyards without canals or ditches are unknown, impossible. Millions would not have been expended in irrigating canals if they were unnecessary. Deprive that country of the waters of its rivers, and it were as well that the Pacific Ocean covered it a thousand fathoms deep and rolled its breakers against the rugged sides of the Sierras.

Is it beyond question that irrigation is a necessity? It is shown that in adopting the common law we should cast aside every part of that system which is unsuited to our necessities or inapplicable to our condition. It is claimed that the English riparian principle does not recognize the right to use water for irrigation. This is the very antipodes of the law of appropriation. Under it the very last owner at the mouth of the stream is entitled to have its full flow, less what may be applied to purely domestic uses by owners above him. Each owner on the stream has the same right as against those above him. In a word, riparianism means no irrigation. It may be assumed that in some States this principle has been modified by the Courts, so as to permit irrigation, of riparian lands only, to a limited extent, and should be modified here. To this the reply is twofold: First, that no such modification could approach the satisfaction of our necessities; and secondly, we have already done far better; we have adopted the policy of "first in time first in right," and instead of restricting ourselves to the irrigation of lands upon the banks of rivers, we have gone back from the banks to wherever water could be most successfully and profitably utilized, and we have now in view such proper regulations of the use of water as shall realize the greatest attainable productiveness with the least possible waste.

The customs and usages in regard to water rights were very early adopted by our Courts, and thus became a part of our common law. *The law of appropriation took its origin in necessity. It sprang up regardless of the ownership of lands upon river banks.* It would have come into existence notwithstanding the opposition of such owners. *This necessity, which is now and always has been the foundation of the law of prior appropriation, was not changed by the purchase of the river banks from the Government by private individuals.* The law of appropriation has been universally supposed to be the paramount law, and rights acquired under not to be hampered by privileges existing in a riparian owner. For nearly thirty years the decisions of the Supreme Court have been uniform in recognizing and maintaining such rights as absolute, and during that time that Court has never decided in favor of a riparian owner against an appropriator.

The law of appropriation, as it exists in the unwritten law of custom, usage and judicial decision, should have its place in our statute books in such form and with such unmistakable plainness that no riparian owner can be heard objecting to legislation upon irrigation.

This is not merely a controversy between irrigators and riparianists as to who shall have the water. It is either irrigation or desolation. To sustain riparianism is to abolish irrigation completely. To declare for appropriation is to give the State incalculable benefits which will be derived from the utilization of all our waters for irrigation.

Where does San Francisco stand with relation to this question? She should be in the foremost rank of the appropriators. The wealth of the agricultural resources of the State are year by year pouring into her lap. Will she sit idly by and be robbed of one-half of her earnings? Is there any future prosperity for a seaport on the margin of a desert? Have railroads been built, steamship lines organized, transportation facilities in every way from this city south and immigration encouraged for nothing? No sane man doubts that but for the population and productiveness of the interior of the State this city would be a village. Allow the riparian wolves to destroy the south and then measure your commerce. Every business interest here should hasten to speak loud for appropriation and irrigation. X.

Alta California.

A Killing Amendment.

Of the irrigation bills under consideration in the Legislature, the first in natural order has been the "Wigginton bill." This is the bill which, if passed, effectually squelches any further handicapping of irrigation. After adding to the Civil Code the new sections proposed by this bill, and repealing the obnoxious riparian Section 1422, a basis will have been laid for further legislation. Under the false pretense of justice to all, amendments have been offered in the Senate to the effect that "the right of riparian proprietors to the use of water in running streams for actual family and domestic use, and for the irrigation of land where practicable, and for the watering of cattle and other stock of said proprietor, shall not be impaired by the provisions of this Act."

This would change the whole force and effect of the bill from its original purpose, which is to foster and encourage irrigation, into a mere re-enactment of the English riparian law, with the additional privilege to the riparian owner which the common law does not confer, that is, "the irrigation of land where practicable." This is a barren privilege, however, for under the law of England a riparian owner cannot irrigate, and, according to the loudly-repeated vociferations of the riparianist, we cannot modify the English doctrine. So we must leave out the question of irrigation by a riparian owner entirely in considering the proposed amendment. But it is urged, and may seem just to those who may be ignorant of the physical condition of most of the streams from which water is diverted for irrigation, that the diversion of water for irrigation should not be so great as to deprive the owner of the banks of water for actual family and domestic use, and for the watering of cattle and stock. None know better than the three firms of

cattle-dealers who comprise the riparian army, that the effect of this amendment would be a prohibition against the use of the rivers of the Great Southern Valley for any purpose except the overflowing of their swamps. The rivers in that section derive their waters from the melting snows of the Sierras. Many of them run dry during the last of the summer, and then, gradually increasing in flow, send down immense volumes of water in the winter and spring. At the higher stages of water there is enough for all. As the streams begin to fall, and the irrigation season sets in, the amount of water diminishes to such an extent that before reaching the swamps upon which they overflow, the water sinks in the beds and totally disappears. A stream which may be a swollen torrent as it leaves the mountains, becomes less by degrees as it advances in its course across the plains, until finally no vestige of moisture remains.

If this water thus wasted is applied to irrigation, it will be the farmers' salvation. Take a map of the State and look at Kings River, Kern River and others. They course for forty, fifty and sixty miles from the mountains before finally sinking. Who is injured if in that course the water is diverted? The water is unfit for domestic purposes. It breeds fever in cattle; it settles in stagnant pools and poisons the atmosphere for man and beast. The natural laws of necessity demand that if there are uses to which this water can be put, not to be supplied by any other means, and other uses which can be satisfied from other sources, the former class of use should have the better right and the latter compelled to resort to other devices. The cattlemen must yield to this necessity and obtain their water supply from the abundant underground resources of the great valley by means of wells. They not only know this, but they have actually availed themselves of the knowledge. They are wilfully false in pleading that river water is necessary for their stock or for their domestic purposes. They have been engaged in a systematic effort to befog, bewilder and deceive the Legislature as to their legal rights, and as to the facts of the controversy between themselves and irrigators. Under the condemnation section of the bill, the irrigators will have to pay for wells enough to give them water for all domestic purposes and for watering cattle. What can they ask more? This proposed amendment is equivalent to striking out the enacting clause. Any Senator who wishes to see irrigation buried fathoms deep will vote for it. No man can befuddle the irrigators into believing the amendment is offered or supported for any purpose than to kill the bill, and they will treat its supporters accordingly.

Alta California.

Law and Irrigation—Flexibility and Reasonableness of the Common Law When Intelligently Construed.

Irrigation was not a necessity where the common law had its origin. Flowing water was first used in England for supplying the ordinary wants of men, including the use of water for domestic purposes, and watering stock,

Afterwards, water was used for what was called extraordinary purposes, such as propelling machinery, for manufactures and the like. Where the civil law prevailed the ordinary use of water included irrigation. By the common law, according to the weight of authority, a riparian proprietor might use all the water of the stream for ordinary purposes. But his right to the extraordinary use of water was limited by like rights in others. In France, Spain, Italy, Mexico and other countries where irrigation is necessary, systems of laws have been developed for the economical distribution of flowing water, among such landed proprietors as own lands so situated as to be susceptible of irrigation by the diversion of streams. These systems are the result of the experience of ages, moulded into laws by codes, edicts and customs. By means of irrigation, thus regulated by law, more than one-half of the people of the world are enabled to subsist.

The common law has not been in force until very recently where irrigation was required. In no part of the United States is irrigation practiced to any considerable extent, except in the territory acquired from Mexico. No case has arisen in this State where the fact that water must be used for irrigation has been taken into consideration as a guide to a proper decision. It has been suggested that, inasmuch as convenient laws for economical irrigation exist only in counties where arbitrary rule prevails, that no effective system can be devised or executed in a free government controlled by the common law. This suggestion comes from a total misconception of the principles of the common law. It is the elasticity and adaptability of the common law to all new changes in the circumstances and conditions of civilized man that constitutes its superiority over arbitrary codes.

LEADING LIGHTS OF THE LAW.

Chancellor Kent tells us:

“ A great proportion of the rules and maxims which constitute the immense Codes of the common law, grew into use by gradual adoption, and received from time to time the sanction of the Courts of Justice, without any legislative Act or interference. It was the application of the dictates of natural justice and of cultivated reason to particular cases. In the just language of Sir Matthew Hale, the common law of England is ‘not the product of the wisdom of some one man, or society of men, in any one age, but of the wisdom, counsel, experience and observation of many ages of wise and observing men.’ And his further remarks on this subject would be well worthy the consideration of those bold projectors who can think of striking off a perfect code of law at a single essay: ‘Where the subject of any law is single, the prudence of one age may go far at one essay to provide a fit law; and yet, even in the wisest provisions of that kind, experience shows us that new and unthought of emergencies often happen that necessarily require new supplements, abatements, or explanations. But a body of laws that concern the common justice, applicable to a great kingdom, is vast and comprehensive; consists of infinite particulars, and must meet with various emergencies, and

therefore requires much time and much experience, as well as much wisdom and prudence, successively to discover defects and inconveniences, and to apply apt supplements and remedies for them; and such are the common laws of England, namely, the productions of much wisdom, time and experience.'”

Professor Pomeroy's excellent work on municipal law was written while he was uninfluenced by any local surroundings, and his graphic description of the principles of the common law, written under such circumstances, will be read with interest. He said:

“The underwritten law, by its very process of becoming law, is continually rejecting what has outgrown, and stating new rules to apply to the relations which are constantly arising. It pushes out its advances in every direction. If the enterprise of any portion of the citizens has opened new channels of trade and business, it anticipates the legislature, and is immediately at hand to define and establish the new rights and duties which may spring from the untried field of activity. It cannot be denied that this power of the law of judicial decision is one of great importance, and that it gives the system a decided superiority over the other as a practical instrument for adjusting the private relations of the people of a State. The fourth requisite of a perfect municipal law is, that its rules, as they exist at any given date, should be flexible, and should embrace the power of admitting exceptions to their general acquirements, so that, when a case does not fall within the reason, although it may within the letter of a regulation, it shall not be controlled by it, contrary to right and equity. Every National jurisprudence should aim at promoting justice; the nearer that it approaches to the teachings of conscience and the morality of Christianity the nearer it is to an ideal legislation. The contrast between the statutory code and the free law of judicial decision in this faculty of doing right by adaptation to the different circumstances is striking and exhibits in a clear light the superiority of the latter system. The one is rigid and inflexible in its rules; they may be repealed by Legislatures, but while they last they admit of no exceptions. The very nature of a statute, as the expression of the supreme will of the State, allows of no interference with its provisions by the courts or other departments of the Government. It may require judicial construction to arrive at the meaning of particular enactments; but this once ascertained, they must be implicitly followed. Were the judges permitted to bend the statutory rules to meet the exigencies of individual cases, and thus promote substantial justice, their essential character would be lost; they would become part and parcel of the unwritten law.”

COMMON LAW AND IRRIGATION.

Why may not the principles of the common law, as described by these learned authors, be invoked for the formation of rules and regulations by the courts for the distribution of water for irrigation? Shall it be said that the common law cannot survive a drouth, and that it be enforced in an arid country the inhabitants must perish? Does not nature, the parent of the-

common law, exist in all climates, both wet and dry? Why may not the dictates of natural justice and of "cultivated reason" be applied in a desert as well as in a swamp? Why may not the courts say that in a country where human life can only be sustained by irrigation, that water for irrigation is a natural right and its use for such a purpose is an ordinary use? Why may not the courts hold that each land-owner over whose land water can be made to flow, in a desert; has an equal and common right with all others similarly situated to the use of such water? Why may not the courts apply the well-known rule of the common law to this ordinary use of water, and class it with the use of water for domestic purposes, and give to the first appropriator so much water as is absolutely necessary for the natural want of irrigation? If the principles of the common law are inconsistent with an economical and convenient system of irrigation, because irrigation was not generally practiced in England, it will be the first time the common law has failed because new conditions have arisen. If the common law is not elastic, how did the Federal Courts acquire maritime jurisdiction over the great lakes and rivers of the United States, when by all English authorities that jurisdiction was confined to where the tide ebbs and flows? Why do the Courts of this country deny the common law doctrine that light and air will pass by deed as an appurtenant to a house having windows, if English precedents, however absurd, must be enforced in this country? Why did the Supreme Court of this State refuse to enforce the common law rule in regard to fencing in one's cattle, if it had no power to reject common law rules which were repugnant to our customs? If the common law is so absolute and arbitrary as to require the abandonment of one-half of California, because water cannot be used for irrigation, why have we in our common law books more than

THREE THOUSAND OVERRULED CASES?

If one decision in regard to water, rendered a hundred years ago, must be precedent for all other cases wherein the use of water is involved, why have we in England and the United States hundreds of decisions making distinctions and discriminations between different cases involving the use of water? If the common law is not elastic, and its principles adapted to the growth and development of a free people, how does it happen that the usages and customs of a rude people in England, without manufactories or any of the appliances or refinements of modern civilization, have been enlarged and expanded by the wisdom of learned Judges, until those customs and usages constitute only small springs or rivulets at the headwaters of the mighty rivers of learning and law, which constitute the governing principles of all countries in which the English language is spoken? If there is anything good or wise in the laws of other countries on the subject of irrigation, why may not our Judges be guided by the experience of such countries? Why may they not follow the examples of the great Judges of England, who, without legislation, engrafted upon and adopted, as a part of the common law, the law merchant of Continental Europe—the maritime law which had been developed on the shores of the Mediterranean, and the principles of equity which had grown

and matured for more than 2,000 years by the learning and experience of the people of Rome? It ought not to be difficult for the Courts of California to find precedents and good reasons to allow the life-giving element of water to fructify the fields. They ought to find laws which will deny to one selfish man owning forty acres of swamp or marshy land on the Bay of San Francisco the power to deprive the people of the great interior of the State of all means of subsistence by denying them the right of irrigation.

WHAT IS TO BE DONE?

Unfortunately the Courts hesitate to apply the principles of the common law to the use of water for irrigation. Ruin threatens the State. What is to be done? Have we a remedy in our form of government? We answer, yes. The legislative department may also make municipal laws. And from time immemorial, when the Courts were unable to provide a remedy, or failed to enforce the principles of common law by reason of technical bewilderment, the legislative department has furnished a remedy. It is gratifying to know that in all that portion of the United States acquired from Mexico, except Nevada and California, the Legislatures and the Courts have operated in harmony in establishing and enforcing wise laws for the regulation of irrigation. We find complete systems in existence in Colorado, Wyoming, Montana, Dakota, New Mexico, Idaho, Utah and Arizona. Some of these commonwealths furnished examples of great wisdom in adjusting the rights of irrigators. The laws of Colorado are superior in effectiveness and simplicity to any we have been able to find in other countries.

There can be no question of the power of the Legislature to deal with this subject. That power is conceded. Professor Pomeroy, in speaking of the laws of Colorado and the Territories last enumerated, says:

“It is enough to say that in each of these commonwealths the statutes have covered the whole ground, entirely displacing common law doctrines, and the labors of their Courts will be confined to the proper construction and application of the statutory rules. Without attempting any further examination of these statutes which so completely displace the common law doctrine, I shall confine myself to the law concerning riparian rights, riparian proprietors and the use of streams flowing through private land in the commonwealths which have not adopted these complete statutory systems and settled all questions of right by legislation. These commonwealths are the States of California and Nevada.”

RIPARIAN RIGHTS IN MASSACHUSETTS.

The Mill Acts of Massachusetts and other States made quite as radical changes in the rights of riparian proprietors as the bills now pending before the Legislature. The Supreme Court of Massachusetts, in an elaborate review of these Acts, among others, said:

“This regulation of the rights of riparian proprietors, both in respect to the stream and to their adjacent lands liable to be affected by its use, involves no other governmental power than that to make, ordain and establish wholesome and reasonable laws, statutes and ordinances as the general Court shall

judge to be for the good and welfare of the commonwealth, and for the government and ordering thereof and the objects of the same. All individual rights of property are held subject to this power, which alone can adjust their manifold relations and conflicting tendencies. The absolute right of an individual must yield to and be modified by corresponding rights in other individuals in the community. The resulting general good of all, or the general welfare, is the foundation upon which the power rests, and in behalf of which it is exercised. (Lowell vs. Boston, 111 Mass., 467.)”

This power to legislate for the public good was recognized and declared by the Supreme Court of the United States, in *Barbier vs. Connolly*, decided at the October term, 1884. In speaking of the Fourteenth Amendment to the Constitution, the Court said:

“Neither the amendment, broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to proscribe regulations to promote the wealth, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessity of society, legislation of a special character, having these objects in view, must be had in certain districts, such as for drainage of marshes and irrigating arid plains.”

Nor does it make any difference as to the right of the State to legislate, whether persons living upon the stream derived title from the Mexican Government or the United States. This proposition is most clearly and forcibly demonstrated by Professor Pomeroy in an article on that subject, which is found in the *West Coast Reporter*. In concluding his argument, he says:

“It seems plain, therefore, that the riparian rights of a private proprietor, holding by a Mexican grant duly confirmed, are exactly the same, governed by the same rules as those held by any other private riparian proprietor within the State. The source of its title can make no difference as to the rights of property which accompany and flow from his ownership!”

WHAT POMEROY OVERLOOKED.

But Professor Pomeroy, in his series of articles upon riparian rights in California, departed from his usual liberality and candor, and took a limited, narrow and technical view. He gave a synopsis of the various Acts of Legislatures of the Pacific States and Territories. This summary is substantially correct as to all the States and Territories except California. The Professor either overlooked or neglected to mention any of the legislation of this State, except two Acts which are printed in the Civil Code. It is possible that the Professor would not have arrived at the conclusion that irrigation is illegal in this State if he had read all the Acts in relation thereto. As early as May 15, 1854, the Legislature passed an Act providing for a system of irrigation in the counties of San Diego, San Bernardino, Santa Barbara, Napa, Los

Angeles, Solano, Contra Costa, Colusa and Tulare, and provided for the appointment of Commissioners and other officers to carry the law into effect, since which time over fifty other Acts have been passed on the subject of irrigation, relating to the counties above named and including some other sections of the State. It seems strange that the Legislature should pass fifty Acts relating to irrigation without changing the law on that subject.

The claims of elasticity and adaptability of the common law must be abandoned if a decision as to the right to the use of water rendered in England a hundred years ago is the law of California, notwithstanding it denies to the people the right of irrigation, and is in direct conflict with the Legislature of the State. If the Courts must so construe the common law as to make prosperity in California impossible, it is time the Legislature deprived them of such an engine of mischief by repealing the law adopting such a system.

Let the Legislature try once more. Let it declare in terms that cannot be misunderstood that California will not let her rivers run to waste into the ocean. That right to deprive the people of the use of our rivers does not exist in any set of men, however selfish they may be. All people in the irrigating sections of the State are proprietors. The so-called riparian proprietors in the San Joaquin Valley have no use for the water in its original channel, but desire to levy tribute upon those who have appropriated it!

It may as well be understood that the people of California are interested in the development of the State, and that they will have such laws, either from the Courts or the Legislature, as will enable them to utilize the resources of California. Let him who stands in the way of this movement beware.

Modesto Evening News.

Sacramento Letter.

SACRAMENTO, February 21, 1885.

EDITOR EVENING NEWS—*Sir*: The great question before the Legislature at this time is that of irrigation. It is the question above all others that excites the attention of the people of the State, and yet there are but few who understand the position of many of the legislators on this subject. As a fact, about two-thirds of the Assembly are for irrigation; but it is hard to say how the Senate stands. There are two widely separated and distinct classes of people to this fight, viz: The irrigators and the riparian owners. Some seem to think that the irrigators are trying to have the Legislature take away the rights of riparian owners, but this is all bosh—no Legislature can take away the property rights of an individual without paying him for such rights. The case is simply this: Our Civil Code contains several provisions relating to "water rights," but Section 1422 (the last section relating

to the subject) says: "The rights of riparian proprietors are not affected by the provisions of this title." Where our law does not cover a question, the common law rules of England apply. Now, the common law holds that the owner and proprietor of the banks of a stream is entitled to the flow of that stream, and that he has certain rights by reason of being such owner. Therefore there are riparian owners in this State, and they have certain vested rights. These rights exist, but under them streams of water flow on and on, benefiting a comparative few. There are large tracts of land in this State, perfect deserts in their nature, which, by a little irrigation, can be turned into, and in many instances have been turned into an earthly paradise; lands where thousands of homes are and can be made, where homes are clustered into towns, where schools flourish and where business interests afford employment to thousands of hands. It is a question of political economy, it is a question of expediency, whether the State should foster and encourage the reclaiming of these desert lands, the reclaiming and settling of some of which has added millions of dollars to our assessment rolls. These lands cannot be settled and these homes cannot be maintained, unless water can be had for irrigation purposes. The water cannot be had, owing to the rights of the riparians. The greatest good to the greatest number being the guide, the present Legislature, in response to popular demand, is undertaking to solve the problem, with a view of doing substantial justice to all parties concerned. It acknowledges the vested rights of riparians, but, by repealing Section 1422 of the Civil Code, persons are prevented from acquiring such rights *in the future*. It undertakes to set in motion machinery by means of which some of the private rights of riparian owners can be condemned and turned over to public use, after an adequate compensation therefor. This is all there is in the present proposed legislation. No one will be damaged by this at this time. Whoever has any property or any right of property will retain it or get its value.

H. R.

Colton Semi-Tropic.

Water Laws of California—To Users of Water in San Bernardino County.

The undersigned representatives of San Bernardino county to the State Irrigation Convention held at Fresno, commencing December 3d, and continuing in session for four days, were members of the legislative committee appointed by that convention to represent the interests of this section of the State.

The discussion of the irrigation laws of the State, as interpreted by the Supreme Court, develops a startling state of affairs, which must be remedied, or ruin stares California in the face. We have confidence that the problem will be solved, for no people will ever submit to be ruined.

The recent decision of the Supreme Court in the celebrated case of *Miller & Lux vs. Haggin & Carr*, taken up from Kern county, affirms the doctrine of riparian rights to an extent which would permit a landowner near the

Santa Ana river, below Anaheim and Santa Ana, to get an injunction from the courts compelling every user of water and every company taking water from the Santa Ana river or its tributaries to turn every drop of water back into the river, whether such water would ever reach the land of the applicant or not, or whether or not he desired to use the water when it did reach him. Thus the North Fork ditch, the South Fork ditch, the Redlands Water Company, the Mill Creek ditch, the Meeks & Daley, the Riverside canals, the Yorba ditch, the Semi-Tropic ditch (irrigating Orange, Tustin City, and Santa Ana), the Anaheim ditch and Cajon ditch, would all be compelled to turn their water back into the river—no matter how long they had used it—and Highlands, Lugonia, Redlands, Crafton, Old San Bernardino, Colton, Riverside, Yorba settlement, Orange, Santa Ana, Tustin City, Placentia and Anaheim would all lapse back into desert wastes, and fifty millions or more of property would be destroyed, if the doctrines of the Supreme Court were carried out and there was no legislation to remedy the evil.

To say that this is an alarming state of affairs is putting the statement in a very mild form. There are two methods of obtaining a redress of grievances: First, by getting the Supreme Court to reverse its own decision (and a rehearing has already been granted), and secondly, failing in this, to get legislation that will allow appropriators to condemn riparian claims and take the water for a public use.

There is no question but the desired end can be reached one way or the other. The most satisfactory remedy would be a modification or reversal of the Supreme Court decision; but, failing in this, legislation can and must be obtained.

If this evil cannot be remedied we shall have no use for an Immigration Association; but an emigration association will be necessary to help people out of a country where it is impossible for them to obtain a livelihood.

Already most of the canal companies of the San Joaquin valley are under injunction to turn the waters back into the streams. In one instance the people took forcible possession of the canals and defied the courts. In another the waters were all turned back into the stream and for three months in midsummer ran to waste in the sands of the river bed, doing no one any good, even to the extent of never reaching the riparian claimant who demanded the waters.

To do this work money will be needed. The committee on legislation at Fresno last week resolved to raise \$5,000, two-fifths of which amount was to be called for at once, and the balance as it might be needed. It is possible that even a larger sum of money may be needed before the question is settled.

San Bernardino County has been assessed \$500, which sum the representatives from this county pledged should be forthcoming, and all water companies, land owners and citizens generally should at once respond by placing themselves in communication with John C. North of Riverside, who represents this county on the finance committee.

Every man of influence in San Bernardino county and throughout the State should at once exercise that influence in a manner that will help the cause of the people.

There is no time to lose. What we want is prompt and decisive action.

JOHN G. NORTH,
S. C. EVANS,
L. M. HOLT,

Members of the Legislative Committee from San Bernardino county.

San Francisco Weekly Star.

Irrigation.

A large part of California can only be cultivated by means of artificial saving and distribution of the natural streams of water. What is the consequence? Of course that monopolists have bought up the land next the streams, and propose to hold and sell the water at their own rates to everybody else. If it were possible to get all the air into one bag and all the sunlight into another, the monopolists would certainly do it, and would then put their own prices on the means of breathing and seeing. Why shouldn't they? "The earth is the (land) lord's and the fullness thereof"—says their Bible. They have pretty much got the public lands already. They are at this moment engrossing the water. If they do not monopolize air and light, it is solely because they can't. They wish they could.

The common sense principle at the basis of this irrigation matter is perfectly plain. Wherever irrigation is necessary for agriculture, the use of water should be controlled by government for the equal benefit of all land owners. Our monopolist partisan Legislature has before it a number of bills on the subject, and there has been some voting backwards and forwards about it in an aimless way. The name thus far applied to the parties in interest is, riparians (*i. e.* riversiders) for the monopolists who have been undertaking to buy up and monopolize the streams, and irrigationists, for those who want a just and equal system for using water. Now, the riparians, being on the wrong side, have a good organization in the Legislature and thus far have prevented anything from being done; while the irrigationists have acted just as folks who are in the right are very often fools enough to do—they have not organized nor planned, and they haven't carried a point. What a fool a man is, who thinks that the right side will win by itself! The fact is exactly the other way. The right side needs the utmost help because men in the wrong work like devils.

We have not the remotest idea that a good irrigation law will be passed this session. But if the irrigationists have the ordinary common sense to fix upon a good plan of operations, to form an organization, and to push their good plan, they can carry their good plan—if not this session, then next session. Two years seems a good while to wait, it is true; but two years is a very short time in which to carry an important public measure.

Napa Daily Register.

Riparianism.

While there are those inside and outside of our Legislature who are trying to adapt the old riparian law of England to California, or California to England's riparian law, the *S. F. Post* thus pointedly dissects the subject:

"The body politic is now sorely afflicted with a disease called 'riparianism.' The germ of the disease was brought into the State with the common law of England. It was supposed until lately that, after treatment for a generation by our doctors of the law, the affliction had been eradicated from our political system, never to reappear. But the present Supreme Court has brought it to the surface, and now the malady has taken such form that nothing short of radical treatment will be efficacious.

"The diagnosis of the case in a nutshell is this: When we organized as one of the Federal Union we adopted the common law as the general system which should be the rule of decision in our Courts. The people began the development of the two great industries of the State—mining and farming. They early found that mines and farms in many portions of the State must be located more or less remote from the streams, Water was a necessity for both, and not being able to move either farm or mine to the stream, the water was taken out in ditches and canals to wash the gold-bearing earth and irrigate the fertile soil. It never occurred to the hardy miner or the toiling farmer to send over to England for a copy of 1 Sim. and Stuart, where he would have found, in the case of Wright vs. Howard, the language of Sir John Leach: '*Aqua curis et debet currere ut currere solebat,*' the riparian law of England. As time passed, farms and farmers multiplied. The farmers trod the path of those before them, and diverted the waters of streams for irrigation whenever necessary. No one needs to be told to what magnitude the irrigation interests have grown. It is enough to say that nearly every man, woman and child in the State is more or less interested in irrigation, directly or indirectly. However, after irrigating for thirty-five years, the farmer awoke one day to the fact that the Supreme Court, which they had helped to choose, had procured a copy of 1 Sim. and Stuart, and translated the Latin of the common law, and that the plain English of it is that irrigation is against the law, and the irrigator is a wrong-doer."

Assembly Bill No. 410, intended to legalize irrigation, was passed last week by a vote of 50 to 16 in the House, our member, H. A. Pellett, voting right by voting in the affirmative. The fate of a similar bill in the Senate is yet to be decided.

Fresno Republican.

The Convention.

The State Irrigation Convention, which concluded a session of four days in Fresno on last Saturday, we believe will accomplish the purpose for which it was held. It is true that it but commences the great work that is to be done,

but there is no small advantage in starting right, and this, in our opinion, the convention has done. As was hoped and intended that it should be, the convention was composed of representative men from all parts of the State where irrigation exists, and also from many parts where there is an awakening interest in the matter so important to the general welfare of the State. Intelligent and far-seeing men from sections where there are at present no irrigation interests, but in which exist the natural resources for grand possibilities when the people have learned to utilize the waters of our streams, were present and engaged in earnest counsel with those who have studied the question more carefully and had the benefit of practical experience.

The proceedings of the first two days of the convention were not calculated to inspire the hope that the conflicting views of the members could be so harmonized as to bring about the unanimity of opinion so much desired as to the manner of adjustment of existing difficulties. There were many in the convention who evidently came simply as the representatives of some existing right, either of riparian ownership or appropriation, who had only in view private interests or that of some particular locality, and the main questions were frequently lost sight of, and it was only after long and patient discussion that these parties could be brought to see that a law is to be framed to meet the requirements of the State and not of some particular individual, corporation or community. Among the first to address the convention were also a number of speakers who hold, or pretend to hold, the opinion that no legislation is necessary, and that the courts will construe the present law so that irrigation may not only exist but flourish under its provisions. It is doubtless to the credit of the convention that all speakers were given a respectful hearing, but it would most certainly have been to the advantage of all had less valuable time been consumed by those entertaining this opinion. Even if the courts finally decide in favor of irrigation, but few acquainted with the subject will deny that some additional legislation is needed under which to build up a satisfactory system of irrigation in California.

The Legislative Committee labored assiduously for more than two days to draft the principles which it deemed necessary to be embodied in a bill to be presented to the Legislature. It is well that the committee acted with so much deliberation and care, as it undoubtedly resulted in the wisest action possible on its part, and also gave the convention time to pass through its frothy stages and be prepared to receive and consider the report in the spirit in which it was made, and with a view to the greatest good to the greatest number, and not to the interest of individuals and sections.

The report of the committee, briefly summarized, recites that the waters of the natural streams and lakes of California belong to the people; that for the purpose of appropriating water, irrigation districts may be formed, vested with power to assess the land for the construction of canals and other irrigation works; that the law of Eminent Domain be so extended as to allow the people to condemn the rights of riparian owners, canal owners and appropriators, and pay for rights of way, or whatever private or corporate property

may be necessary for the successful appropriation for the use of water; that the old common law of riparian rights does not apply in this State; that laws of appropriation be more clearly defined.

This is the platform upon which the irrigators of California will go before the incoming Legislature, and will ask the adoption of these principles as the law of state. That their adoption without a dissenting vote by a convention so representative as that assembled at Fresno last week will bring a strong influence to bear on the Legislature there can be no doubt. In that convention were the representatives of all the irrigation interests of the State, representatives of riparian claimants and representatives of sections disinterested except in the general welfare. Wisdom and experience were united in the person of the committee which framed the declaration of principles, and its work was marked throughout by careful and conservative deliberation. That its action was the wisest and best that could have been taken, the unanimous approval of so large, representative and intelligent an assemblage as that composing the convention is the strongest possible proof.

If the action of this convention were to have no direct influence on legislation, its effect on the State at large would more than compensate for the time and expense necessarily devoted to it. The greatest drawback to the advancement of irrigation in the past, and the passage of laws that would encourage and aid its development, has been the existing ignorance concerning it, outside of a few irrigated districts. This convention has created a general interest throughout the State. Newspapers are discussing it, plans are forming for irrigation systems in places where it has hitherto been unknown and almost unthought of, and the people of the entire State are awakening to its importance.

Fresno Republican.

Ignorant of the Facts.

The *Chronicle* persists in holding to a previous statement that a majority of the farmers and old settlers of California are riparian owners. In its issue of December 5th, it says:

"A country contemporary reproves the *Chronicle* for saying that the old farmers are generally in favor of riparian rights. Yet this will be found to be the case. As a rule the farms that were laid out in this State from 1850 to 1865 were located on the borders of running streams. So long as such land could be taken up no one was fool enough to locate at a distance from water."

THE REPUBLICAN is the country contemporary referred to, and while it makes no denial of its bucolic location, it does most emphatically deny the truth of the *Chronicle's* statement, so far, at least, as it applies to this portion of the State.

Kings River is the most important stream in California from which water has been extensively diverted for irrigation. From its source in the Sierra Nevada to where it empties into Tulare Lake, there is probably not 160 acres

of land irrigated by the owners of small farms along the stream. The bluffs of the river rise abruptly almost from the water's edge to the common level of the surrounding country, and it is, we believe, a demonstrable fact that water can be brought from Kings River to Fresno (although the river is some eighteen miles distant at the nearest point) in a canal of less length than would be required to bring it to land lying along the banks of the river at an equal distance from the foot-hills. From the crossing of the Central Pacific railroad to the foot-hills, a distance of about twenty miles, there are less than half a dozen farm houses on Kings River, and with the exception of one or two small orchards in the swampy bottom lands near the hills, there is no irrigation whatever. The banks of Kings River are the most unproductive and desolate part of the country. Those located upon its banks can only watch the waters flow idly by, except the little that may be used for stock. There were no early settlements along its banks except by those who bought land lying along the river at a nominal price that they might monopolize a vast stock range. Between the railroad crossing and the mouth of the river the banks are nearly all the property of these land monopolists, who own thousands of acres which are used only as a stock range. It is from these monopolizing riparian owners that nearly all the opposition to diversion of water has come. The small owners along the streams are almost without exception in favor of the diversion of water.

What has been said of the Kings River can be said with slight variation of the San Joaquin in this county. There are no settlers along its banks to whom the water is a necessity, or to whom it is especially beneficial except for stock.

Farmers on the banks of the streams enjoy no advantage over those on the open plains, except that their stock has access to water at the surface, while their neighbors distant from the river and irrigating canals have to draw water from a well. This is the reason many of the early settlers located on the rivers. The bulk of the farming in this county has always been done in the foothills and on the open plains.

Our metropolitan contemporary should endeavor to acquire a more accurate knowledge of existing conditions before passing judgment on a case in which so many vital interests are involved.

Santa Rosa Democrat.

The Irrigation Question.

The subject of irrigation is one of the most important that engages the attention of the people of California at this time. More interest has been manifested in it in the southern part of the State until now, for the reason that it is of vital importance to that section. Its prosperity, indeed its very existence as an agricultural and horticultural country depends upon it. There is a large area in which crops cannot be raised without the artificial application of water. Northern California and the coast counties are less dependent,

because the rainfall is greater. On the coast all kinds of crops can be raised from the natural rainfall, and in the Sacramento valley the cereals and fruit do well frequently, but occasionally there come dry years in which the crops fail. It is well known that crops will be certain and the yield much greater if irrigation were resorted to, and hence the subject is exciting interest in Colusa, Tehama and other coast counties.

The present Legislature will be called upon to deal with this question and settle the policy of the State with regard thereto. A very important question is involved. It is whether the old English law of riparian rights shall prevail, or whether the land-owners along the course of the streams shall be permitted to take out and appropriate their waters. The importance of this question is illustrated in Kern county. Kern valley is entirely dependent upon Kern river for a supply of water to fertilize the land. Haggin & Carr and others own the land in the upper part of the valley, while Miller & Lux have a large body of land lower down. The land-owners in the upper part of the valley, years ago, laid claim to the waters of the river, and made canals to divert and turn them out upon their lands. A few years ago Miller & Lux set up a riparian claim to the water, and denied the right of those owning land above them to divert it for irrigating purposes until they were supplied for ordinary purposes. They brought suit to prevent such diversion, and won their case in a recent decision. An appeal will be taken, and the case carried to the highest court before it is finally disposed of. In this case, if it is decided that riparian ownership gives priority of right, the better part of Kern valley will be converted back into a desert, for there will be no water left for anybody after Miller & Lux are supplied, at the season of the year when water is absolutely essential, for the reason that Kern river runs over a sandy bed and through a sandy subsoil, and the water in the dry season sinks and is lost, a very small quantity reaching the lakes into which it flows, and some seasons none at all. If the old riparian doctrine becomes the settled policy in California, a blow, almost fatal, will be struck at the prosperity of Southern California. It applied well enough in England where the rainfall is abundant and the use of water is limited, but the case is different in California and requires different treatment.

In Northern California another difficulty seems likely to arise. It is that the diversion of the waters of the Sacramento river will imperil its usefulness as a navigable stream. This difficulty has been suggested by the *Record-Union* of Sacramento, and is under discussion by the press at this time. The position assumed by the Sacramento paper, if we understand it, is that apart from the injury that would result to navigation, all navigable streams are the property of the General Government, and the State cannot confer any rights that will impair their usefulness.

Sonoma county has very little interest in the controversy except as it affects the general prosperity of the State. In that particular it is deeply interested, and earnestly desires that there shall be such a solution of the question as will be best for the people, and will create millions of dollars

worth of taxable property, and thousands of happy homes, by the distribution of water over the largest area practicable.

Alta California.

The Opposition to Immigration.

Upon a large map of California may be observed, near the center of the great southern valley, several large swamps lying to the north and the south of Tulare Lake, formed by the overflow of Kern and Kings rivers. The combined area of these swamps is some two or three hundred thousand acres. The riparian owners upon the rivers above the swamps are chiefly farmers, who have long since appropriated water for irrigation, under the State common law of appropriation, and who rely upon that law for the security of their right. A petition signed by a large number of these owners was presented to the Senate yesterday, asking for the passage of the Fresno Irrigation Convention bills. Such riparian owners as these are, almost to a man, opposed to establishing the English system of riparian rights. This may seem singular to one unacquainted with the nature of that country. The explanation is simple. By his right of appropriation the riparian owner can irrigate; but if his riparian right is thrust upon him he cannot take water from the streams, because if he does there will be no water left for the last riparian owner at the mouth of the stream, for either domestic purposes or for watering cattle, let alone irrigation. That this statement is true can be proved by the testimony of every riparian owner in the valley.

The owners of these swamps are almost alone, among the land owners of the State, in their opposition to the proposed laws to perpetuate appropriation and irrigation. Their business is cattle raising. The plea they make against irrigation laws is that they have vested rights as riparian owners, of which the Legislature cannot and ought not deprive them. They claim that, if nothing more, water should be left them for domestic purposes and for watering cattle. [The Legislature should treat this water question as a conflict between the whole people on one side and the monarchs of Kern and Kings rivers swamps on the other.]

These swamp land owners are not riparian proprietors. Both the rivers mentioned, when considered as natural water courses, end where the swamps begin. Only the owner of land upon the banks of a natural watercourse is a riparian proprietor. Where there are no banks there can be no riparian ownership. When the rivers just named reach the swamps they cease to be rivers and their banks disappear. The water spreads out over the face of the country in all directions, without any definite course or channel. It does not require a flood, reaching the mouths of the rivers where they discharge into these swamps to overflow the country. At the lowest stages of the river, whenever there is sufficient water so that any amount, however small, flows to the margin of the swamp, it there loses itself in all directions. A water-course is defined as a stream of water, usually flowing in a definite channel

having a bed and sides or banks, and usually discharging itself into some other stream or body of water; it must be something more than a mere surface drainage over the entire face of a tract of land. This is an authorized and well established definition, and within it these swamp-land owners are not riparian owners, and are not entitled to any rights as such.

The claim made by them that their lands are naturally watered by the overflow of the rivers, even if conceded, gives them no rights at common law or under any law of this State. They obtained title to the land from the State for a mere song, and then only on condition that they should reclaim the land. They have never reclaimed it. If any partial reclamation has been accomplished, it has been by the diversion of the river waters above, by third parties for irrigation purposes. They now ask this Legislature to grant them rights which no existing law gives; the right to have forever overflowed lands which the State gives them to reclaim from the overflow. Instead of having any rights, their lands ought in justice to be forfeited to the State for failure to comply with the condition. The Senate, which has now under consideration a proposition to give riparian owners the preferred right, against irrigators, to water for domestic purposes and for cattle, must plainly see that it is not made in behalf of the real riparian owners, but for the sole benefit of the swamp-land owners; for if under the law the water must all flow to the last riparian owner at the margin of the swamp, no one but the swamp-land owner, who has no riparian right, will get the benefit of it.

Santa Barbara Express.

Water Rights.

For several weeks a fierce contest has been going on at Sacramento over the irrigation problem. The lobbies of the Legislature have been swarmed with advocates of opposing sides of the great question—than which no more weighty has ever come before the people of California. Our dispatches of yesterday state that the Assembly has passed the series of bills framed by the Fresno Convention. This will be good news for the people, and the Republican party should receive all credit for the upright manner in which its members in the Assembly have worked and voted.

Merced Express.

The members of the California Legislature who vote against the Irrigation bill now before that body should be placed upon the "black list," and if ever they should poke their heads up for office the people should go for their scalps. The time is at hand when the people of the agricultural districts of California demand and must have suitable irrigation laws, and those members of the Legislature who oppose such laws are defying the earnest and direct wishes of the people.

Fresno Expositor.

J. W. Shanklin, once Surveyor-General of this State, "hogged" more water in Los Angeles county than he has land to cover, or has "hogged" more land than he has water to cover, we know not which, is up at Sacramento "bellyaching" against the irrigation bills. The burden of his song is that the laws proposed don't fit his case. Shanklin ought to buy an uninhabited island and move on it. Then he could pass laws to suit his own views.

Kern County Californian.

Thus far all the opposition to the irrigation measures has come from three men, Miller & Lux and Senator Cox. While it has been noisy and obstructive there has been no basis to it except money. The open opposition of Cox in the Senate has done himself and his friends more hurt than good. His argument is that they may hurt him to the extent of a few thousand dollars, ignoring the fact that a way is provided to make good all his damage, and bring upon him other fearful hardships. All he has had to say, thus far, has not been of a nature requiring reply, and the irrigators sincerely hope he will continue to occupy the floor as much as possible. He deems it sufficient argument to insure their defeat that they may possibly work some injury to himself. And this is good reason why half the State should remain desert and untold thousands of present and future generations suffer poverty, want, and all the attendant evils.

Who Are They'?

The reports from Sacramento show that some twelve or fifteen Senators are "dodging" the irrigation bills by refraining from voting. Yet, when the Heath amendment to reduce railroad taxes was passed, every Senator was in his seat and voted. The passage of the irrigation bills is of as much importance to the people as the adoption of the Heath amendment is to the railroad company. Is the inference to be drawn that the Senate believe in making the public interest subordinate to that of the railroad? Explanations seem to have been the order of the day at the final roll-call upon the Heath amendment. Many Senators took occasion to explain their votes. It would not be entirely uncalled for if the Senators not voting upon the irrigation bills would rise and explain their silence. There is more or less curiosity to know who these men are that are more friendly to the monopoly than to the people.

San Francisco Post.

Since the defeat of the irrigation measures has become apparent, a strong effort is being made to induce the Governor to call an extra session of the Legislature for the consideration of this question alone. Should it become

necessary, it is to be hoped that the extra session will be held, that the rights of the irrigators may be thoroughly established. The question is one of too much importance, and the interests involved are too vast to permit of their remaining unsettled for two years more.

Petaluma Argus.

Our Advantages.

The *Argus* recently referred to the great advantages possessed by Sonoma county over some other sections of the State, in that our farmers and orchardists are at no expense, trouble or care incident to artificial irrigation. We have become so habituated to having bounteous yields of grain and fruit, assisted alone by Nature's gentle dews, that we do not aright appreciate the advantages we enjoy. Had our orchardists and vineyardists to irrigate, as they have to in some of the southern counties of the State, it would entail upon them an expense at least four-fold that of their present tax-rate. Water for irrigation, and exorbitant water-rates, is the vexed question now agitating the inhabitants of many portions of the State. The question has assumed the proportions of a political issue, and the most formidable issue with which the present Legislature is now grappling relates to riparian rights. The question of right to divert water from its natural channel to slake the thirst of arid agricultural and fruit lands now threaten to even overshadow the mining debris problem. If at this early date, when only a small portion of their lands have been reduced to cultivation, the water supply for irrigating purposes is a matter of grave concern, what will be the probable proportions of that subject twenty years hence? It is important that the incoming immigration to this State should be correctly advised in reference to the advantages that Sonoma and adjacent counties enjoy in this respect. Here neither drought nor mining debris "molest or make afraid" those dependent on the generous soil for a livelihood. In these advantages alone Sonoma county has a bonanza of greater value than was ever laid bare on the Comstock Lode, for it is as enduring and imperishable as are our rich hills and valleys. With a soil and climate of demonstrated adaptability to the raising of principally all the staple products of either grain or fruit, there is not within the borders of the State a more inviting field for families seeking homes than right here in Old Sonoma. We are possessed of the superior advantages above enumerated, and there is no good reason why we should not profit by them to the extent of quadrupling our population in the next few years.

S. F. Examiner.

The Slickens Bugaboo.

The riparian claquers, after ringing the changes on the "vested rights" business, are now trying to raise a false alarm among the people of the northern counties by pretending to discover a slickens "joker" in the pending irri-

gation bills as amended by the Senate in Committee of the Whole. The lords of Kern and Kings river swamps, who are the commissaries of the riparian squad and furnish ammunition to the anti-irrigation sharpshooters, would see the northern half of the State buried in debris, provided their bogs and morasses are not interfered with. The pretense made by them, that the navigability of the rivers of the State can be affected by the provisions of Assembly Bill 410, or by any language added to the bill that the united skill and ingenuity of all the lawyers in the State could devise, or that it can make lawful any use of water which is now unlawful, is the veriest sham. The courts have forbidden in the most absolute language the deposit of mining debris in the rivers. The Judges have laid down the law to be, that hydraulic mining cannot be pursued in this State to the detriment of the navigable rivers, or to the injury of private property. It has been declared by the courts that this law is inexorable and unchangeable; that the State Legislature cannot change it, and that Congress cannot alter it. But, even were it otherwise, there can be no pretext that the amendment proposed would in any way affect the debris question. The right to appropriate water does not carry with it the right to fill up the streams with slickens. The legislator who pretends to be fooled by the suggestion made against the irrigationists on this subject cannot hope to make the people believe that he has been deceived.

Santa Cruz Daily Sentinel.

The Irrigation Prospect.

Thus far the proposed irrigation legislation has made fine progress. All the measures proposed by the irrigation convention have passed the Assembly and appearances indicate that they will pass the Senate. The most important of the bills is the one providing for the condemnation of water rights under the power of eminent domain. If it becomes a law it cannot but prove highly beneficial to the State. It will emancipate us from the dog-in-the-manger spirit that lies at the foundation of the theory of riparian rights as construed by the common law and the Supreme Court. It will give to the people of California what nature designed for them—an equitable distribution of the rich life-blood circulating through the river-veins of their State. It will be worth all the expense of the session ten times over if this measure ripens into a law.

The other irrigation bills are of more or less importance, but do not compare with the one above mentioned. They could all be defeated without substantially lessening the good which that will accomplish. One of them declares that the common law does not apply to water rights in this State. This will be of small importance in the face of the decisions of the Supreme Court declaring that the common law *does* apply.

Another of the bills repeals the section of the civil code which declares that the present law governing the appropriation of water shall not affect riparian rights. But the repeal of that section will not prevent the Su-

preme Court from declaring in the future, as it has in the past, that riparian rights are vested rights and can not be arbitrarily taken from one citizen and given to another by either courts or legislatures. This law would be useless without the other one, sanctioning the taking of riparian rights for public use.

Another bill is designed to define the extent of the water rights now claimed under the operation of the present appropriation laws. This will be a useful law, as it will tend to prevent clashing and uncertainty when it is sought to condemn or regulate the rights of appropriators under the bill first above mentioned.

The remaining bill of the series is one proposing an amendment of the Constitution prohibiting Supervisors and other municipal authorities from fixing the price of water furnished for sale by private persons or corporations at a figure that will not be at least seven per cent. upon the capital invested.

It will be seen as above remarked, that the first one of the bills above named is the one in which the people are specially interested. Every person who has studied this irrigation question uninfluenced by self-interest or prejudice, will heartily rejoice at the passage of this measure, and will hail those members of the Legislature who aid in the good work with the plaudit, "Well done!"

Kern County Californian.

The Irrigation Struggle.

We publish in another column articles from the San Francisco *Post* and *Alta*, showing the earnest fight they are making for the people on the irrigation contest. They strike the key note for the future. Although the battle against riparianism seems to be at its hottest at this moment, it is in truth just begun. The field of active operations will soon be transferred from the Legislature to the people. It is time even now to begin preparations for active warfare against riparianism and against all its friends. In the coming struggle let Democrats and Republicans sink their differences in the common cause against the common enemy. Organize into anti-riparian clubs. Keep in the records of the clubs a list of the names of those who, either in the Legislature or elsewhere, have encouraged riparianism and the destruction of irrigators and irrigation. Let every one of them be marked for defeat at all times and in all places. Beat them in conventions. Destroy them at the polls. Whenever one of them appears as a candidate for office, high or low, or is an aspirant for any favor from the people, see to it that he is denounced as recreant to the interests of the people and unfit to be trusted by them. At the head of such a black-list, as having had greatest power for good or evil, chose to exercise it to crush irrigation, and deliver Southern California over to R. E.

Houghton and his riparian clients, should be placed the following-named riparian, anti-irrigation Assemblymen:

ALLEN, of Sonoma.
 COLBY, of Placer.
 DAVIS, of Sacramento.
 ELLISON, of Tehama.
 FIREBAUGH, of San Francisco.
 JORDAN, of Alameda.
 HENRY, of Butte.
 HEYWOOD, of Alameda.
 HOLLISTER, of Sacramento.
 JONES, of Sacramento.
 McJUNKIN, of San Francisco.
 WALRATH, of Nevada.
 WATSON, of Alameda.
 WARD, of Butte.
 WOOD, of Sierra.

San Francisco Alta.

Have the Roll Called.

Not very long ago the friends of irrigation were encouraged to believe that victory in the Legislature was near at hand. They were supported in the Assembly by a majority against which the dilatory tactics of Jordan, McJunkin and other anti-irrigationists were unavailing. A clear majority of the Senate was found to favor the bills, but since they were taken up for consideration, day after day has been wasted in idle talk. The efforts of the riparianists to suspend action until it should be too late to get the bills through before adjournment, have been nearly successful. Unless the Committee of the Whole shall report the bills back to the Senate favorably on Monday, and the Senate can be induced to act immediately upon the report, they cannot be passed before the expiration of the constitutional sixty days. This is a most lamentable state of affairs. That with a decided majority of both branches of the Legislature in favor of legislation for the relief of irrigation, all attempts to reach a final vote have failed, is a source of profound regret. The only remedy open to relieve the situation and save the State from the calamity of non-action for two years, is either to prolong the session or for the Governor to summon an extra session for the exclusive purpose of arriving at a solution of the irrigation problem. But, whatever is to be done, if the skulking course pursued heretofore in Committee of the Whole is pursued on Monday, the friends of irrigation in the Senate should not fail to so move in the open Senate as to discover to the people whom they may depend upon hereafter to advance their cause in the Legislature, and upon whom they may rely to be faithful to the greatest of the State's necessities. If the leaders of the warfare against riparianism, in the Senate, do not force a yea and nay vote in that body before adjournment, so as to unmask and drag into the light the men who cannot be trusted on this question, they will make it possible for faithless representatives to again betray their trusts.

San Francisco Call.

Mining and Irrigation.

It is a matter for regret that the irrigation question should have become mixed up with hydraulic mining. The fact that the principle upon which water is taken from its natural bed for purposes of irrigation is the same as that upon which it is taken for mining purposes does not make these kindred measures. The irrigationist may admit the full force of Senator Cross's amendment, and then proceed to legislate upon mining and upon irrigation as two quite distinct industries. We may include the right to appropriate water for mining purposes in the declaration that the common law of England which relates to riparian rights is "repugnant to and inconsistent with the climate, topography, physical conditions and necessities of the people of this State," and afterward deal with any branch of the mining business on its merits. We do not propose to stop hydraulic mining on the ground that the various water companies which supply these mines have no right to the water they have appropriated, but on the ground that the owners of these mines have no right to deposit the debris from the mines in the natural water-beds, from which they will be flooded upon the valleys below.

When Senator Cross interpolated the words "and mining" into the second section of bill 410, he simply creates the necessity of sending the bill back to the House for concurrence. The amendment does no other harm. A friend of the irrigation bill would not have thrown this obstacle in the way of its passage; but there really is no reason why the House should not promptly concur in the amendment if the bill passes the Senate. We think the *Record-Union* attaches too much importance to the amendment, while agreeing with that journal that no bill should be passed which would reopen the hydraulic mining question. The right to appropriate water for mining purposes was established thirty odd years ago, so far as doing a thing can establish the right to do it. Hydraulic mining has been stopped within three years because of the destruction of property that is clearly unavoidable from such operations.

Los Angeles Express.

Irrigation of the Plains.

Emerson, in his "Dictionary of Rural Affairs," says: "There is no question of more importance in a national point of view than the improvement of the soil by the practice of irrigation, for in its prosecution all the rich organic and other matters diffused through the rivers, which would otherwise be carried into the sea, are saved to agriculture." There are vast acres of land, as in Egypt, Italy, Spain, France and India, where barrenness and desolation would reign were it not for the enrichment furnished by artificial supplies of water.

The desirability of a system of irrigation over an immense area in this State is now too generally recognized to admit of discussion. From the ex-

treme southern part of the San Joaquin valley to the extreme northern part of the Sacramento valley summer crops cannot be possibly raised without irrigation. There are large districts of the State where the hope of the farmer is liable to be blighted by winter drought or a dry season. Then there are other large plains where farming is practically impossible without artificial supplies of water. In many counties where irrigation is necessary the topography of the country is such as to make it very difficult, laborious and expensive to cut canals and store the water. Nature, in planning the topography of California, seems to have had an eye to business, and with a beneficent foresight has laid the foundation of the grandest system of irrigation the world has ever seen. From the mountain ranges along the entire eastern boundary of the State to the Pacific Ocean on the west, the surface slope is so gradual that the waters of rivers which traverse the territory can be carried in canals over the greater part of this immense region of arable land. The supply is abundant, and if properly distributed, would insure crops on millions of acres where the crops are now uncertain or impossible, and add greatly to the aggregate wealth of the State. The Tuolumne, Calaveras, Stanislaus, Mokelumne, Merced, Fresno, San Joaquin, Kings, Klamath and Kern rivers embrace a territory as large as the States of Connecticut, Rhode Island, Vermont and New Hampshire. It is believed that every foot of land in this immense district can be irrigated by the waters of these rivers if properly collected and fairly distributed.

By an Act of the Legislature, March 29, 1878, the office of State Engineer was created, and one of the most important duties assigned to it was that of investigating the problem of irrigation. The problem is a vast one that may take a number of years to completely solve. Any one who has not carefully studied Mr. Hall's report can form no adequate idea of the vast amount that remains to be accomplished. The general maps of the State and the special maps and profiles that have been constructed, showing more minutely and accurately large scopes of country and their gradients, as a basis of engineering study, are a monument of patient and intelligent industry, and the geographical, topographical, and hydrographical data that have been collected, are of inestimable value. Why our legislators failed to appreciate the importance of completing this great work we never could divine. Still less can we understand why, in the present session of the Legislature, there should be such an organized and determined opposition to the repeal of Section 1422 of the Civil Code. If the principle involved in that section is allowed to remain in the Code, it is a virtual termination of the whole scheme of irrigation. It would turn the Fresno plains, now dotted with grain fields, orchards, vineyards and gardens, into a cheerless waste. It seems hard and unreasonable that a system of riparian rights that has grown up in another country, in many respects very dissimilar to this, should have been kept alive so long. The State Engineer, in his report, called the attention of the Legislature four years ago to the fact that the common law doctrine of riparian rights, "that water runs and ought to run as it has been accustomed to run," as Black-

stone states it, would make difficulty in this State in attempting to carry out a system of irrigation unless changed by legislation.

Political Record.

**Irrigation.—Riparian Rights and the Common Law.—The Rights of the People are Supreme.—Nothing is Guaranteed but Liberty.
The Republic is above all.—Amending at Pleasure.**

There is an irrepressible conflict now imminent between those who contend for the sovereignty of the people and those who set up technicism, precedent, authority, and vested rights, as the supreme law of the land.

Naturally those who have got possession of land, franchises and monopolies are the advocates of "Vested Rights." Mr. Stanford, our new Senator, is of this class. In a recent letter to the New York Chamber of Commerce he laid down the broad doctrine that grants of land or franchises made by Congress however corruptly, and sustained by the decisions of courts, must be respected, though the people starve and the Republic perish.

The same doctrine is held and argued in the Legislature, in relation to the common law and riparian rights. It is contended by these advocates of monopoly that when the United States Government deeds a piece of land to a private holder, he takes from the center of the earth to the vault of heaven, with all the appurtenances, according to the then law, and that the deed becomes a vested right that no subsequent legislation can take away. Senator Cross says that the courts of the United States will so adjudge and set aside any legislation to the contrary. And it will do so under the common law of England.

We do not hold to this view of the case. This is the common law, holding only till the people set it aside by statute. It is then dead. The common law is the very tail end of our law, wagged by all the rest. While unrepealed the United States Courts would be bound to abide by it; but when repealed by statutes it is dead.

Now what really is the common law in relation to land holding and riparian rights? In England it is and has been this, and nothing more: The patentee of land from the Throne, takes the land, with all the appurtenances, as described by the common law subject to the statutes of England, for all time, to amend, enlarge, curtail, tax, hamper or nullify, as the sovereign power may decree.

True, the landholder in England was the law-maker, the judge, the jury, and almost the factotum. He therefore made his rights as perfect as possible. He claimed land, water, game, fish, everything of value. Within his lines he was lord of all, with none but slaves to stand in the way. He denied the right even of a balloon to come between his land and the sun. He claimed all that fell upon it, whether from land, air or sea. At one time human beings trespassing on it without his leave were made his slaves, serfs and vassals, unless claimed by some one more powerful.

But the statutes of England have stripped the feudal lords of a great many of these ancient common law rights. They have taken for public use all navigable water. They have taken the right of way for roads, railways and through travel. And recently, in Ireland, the Government has dictated the terms on which the landowner should rent and even sell the land to the tenant. In the very empire of the common law, and the landholder, and the riparian and vested rights, the Government has declared that all must yield to the changing policy of the times; and the landholder hold nothing but what it is the best policy of the country to permit.

This is eminently and necessarily the law of the great Republic. Our fathers well knew what they were about when they made the Constitution amendable, forever, at the will of the people. We cannot have laws like the fabled Medes and Persians, fixed forever. We cannot permit any man or any set of men to set and fix stakes for us which we can neither pull up nor break down. No corrupt Congress, no corrupt courts, no monopolists or technical pleaders, can tie a knot that the sovereign people cannot untie. If they do we shall cut it. Our monopolist may as well know first as last that only the Republic and the sovereign will of the people can be supreme.

Every landholder in America took his land under this implied contract. He might keep snakes, run a hydraulic mine, build a whisky-still, or store his land with dynamite till the people made a statute against it, and then he must stop. The State of California is sovereign. The United States sold him the land subject to the Sovereign Power forever. If now, the State of California, in a new and peculiar position, choose to say, that as to the waters of this State, and so far as they are needed by the people for domestic use, and for the irrigation of land, the Common Law is set aside, and the Statute shall rule, there is no lawful power in man to overrule the decree, and all the courts of the country will be obliged to take notice.

Let it not be forgotten that the Riparian himself, in the new arrangement, will acquire as a person and a resident of the district, a right to water in many cases more useful and secure than his riparian right.

But in any case, water in California becomes a thing of prime value, more than in most other lands, and the people in taking charge of it do but resume a right long monopolized by the land-owner, under an arrogant and unjust rule.

Only two things are guaranteed in these United States:

That the Republic is forever!

That the people rule.

Daily Examiner.

Riparian Lobbyists.

It is currently reported that a delegation, composed of members of the Republican State Central Committee, are at Sacramento lobbying against the irrigation bills and in favor of the so-called McClure "compromise." The

end in view, according to report, is the "good of the party." It is to be assumed that this delegation of party lobbyists are acting by authority and represent the Republican party organization. Their programme is to defeat the bills and postpone action for two years longer, and then undertake in the next political campaign to shoulder the responsibility of the defeat upon the Democrats. They hope then to catch the people with irrigation planks in their convention platforms. But the people have had enough of "molasses to catch flies." The coming political conventions may put irrigation planks in their resolutions to their heart's content; they can gull the people no longer on this water question. The difference between resolving and acting has long since become apparent to the masses. What is wanted is votes for irrigation now, not party resolutions favoring it two years hence. We call the attention of the people to the fact that the Republican party organization is exerting a pressure upon Republican Senators against the public interest to accomplish selfish party ends. If the votes of Republican Senators shall render it impossible to pass irrigation legislation before adjournment; if the head-centers of their party now in the lobby of the Senate buttonholing Senators against irrigation are successful in their efforts to prolong the present unfortunate condition of affairs two years, their party must bear the burden of responsibility. The Republican party must go before the people at the next election with a record they have made against the farmers of the State. The people will thoroughly understand what a selfish political leadership has done, and how these Republican leaders have sacrificed the great farming interests of California to serve their sordid ends. The McClure compromise was, beyond doubt, prepared for the express purpose of defeating the irrigation legislation. A legislator who favors it is opposed to irrigation for all time, and the party leaders who are now pressing it cannot hereafter fool the people by idle words in party platforms. The Barmecide feast which Mr. McClure proposes shall satisfy the popular demand for water for irrigation will appease and satisfy no one. The time has arrived when the question must be settled and legislation must go upon the record.

The Republican leaders may successfully lobby against irrigation measures now, but the people are thoroughly aroused all over the State. There is no section of the State which is not directly interested in the subject of irrigation. It is one of the most important questions which has been presented for years, and the legislator who, at the dictation of a few self-styled Republican leaders, now refuses to give the people relief, will find it impossible to explain his action or make any excuses which can be accepted.

Democratic Senators need not be reminded that one of the great underlying principles of Democracy—the one which contributed more largely than any other to our recent glorious success in the nation—is that the welfare of the people is the paramount law of the party, and only by identifying the party with the interests which the people have nearest their hearts can it hope for success in the future. Let it not be said that the farmers of the State asked you for bread and you gave them a stone.

San Francisco Examiner.

Whitney's Bill.

Whitney's anti-irrigation bill is a special order in the Senate to-day. The vote upon this bill will discover to the people the names of the hitherto concealed opponents of the popular irrigation policy. Mr. Whitney, a Republican Senator from Alameda, proposes by this bill that the waters of the State shall be divided between the riparian owners and the swamp-land grabbers; and that if any water shall be left, after supplying the fever and ague districts with sufficient to prevent the disappearance of that disease, and furnishing poisoned and putrid water for cattle, then the irrigators may have it. But rather than have the swamps reclaimed, irrigation must go to the wall. To catch the unthinking man, or entrap the unwary friend of irrigation, this bill of Mr. Whitney is the most shrewd and ingenious decoy that the riparianists have set afloat. It purports, on its face, to advance irrigation to the front and to make it subordinate only to the use of water for domestic purposes and for watering cattle, with a proviso, however, that lands naturally watered by the overflow of running streams shall practically have the first right to the water of the stream *to the extent of the overflow*. The proposition to give preference to that use of water for domestic purposes and for watering cattle has been fully discussed and disposed of in both houses of the Legislature, and of course could not stand in the Whitney bill. But the sting of bill is in the overflow clause of Section 8. All of the rivers of the upper and middle San Joaquin valley end in swamps. The waters begin to increase in the streams in the Winter season, until instead of being lost in their sandy beds far above the mouths of their channels, they gradually progress until finally they reach the margin of their swamps, into which they empty and overflow. In the late Summer the waters gradually diminish until the water no longer reaches the swamps, and the terminus of the flow gradually recedes up the river. There are many weeks during the irrigating season when the flow of the stream is so greatly diminished that, while a very large quantity of water may be flowing in the channel from the mountains, a very small quantity reaches and overflows the swamps. At such times the diversion of a very slight quantity above would prevent water from overflowing the swamps, and would deprive the swamp of the natural overflow provided for in the Whitney bill. And it is at the season when this is the situation that water is most needed for irrigation. The whole flow of the river is the natural overflow upon the swamp lands, and this proviso giving this overflow, that is to say, all the water of the river, to the owner of the swamp, effectually shuts off all irrigation above.

If this is the kind of irrigation legislation the supporters of the Heath amendment and the Republican leaders in the Senate propose to give the State, the irrigators will decline it without thanks. They prefer the less injurious riparian law.

Fresno Expositor.

The Legislature will adjourn without passing any of the irrigation bills. The Senate has manifested an intense hostility to the measures, and unfortunately, so far, there has been no roll-call, so that the irrigators can know just who their friends are. Their leading enemies are well known, but the individual standing of each of the forty candidates for Governor, Congress and Senatorial honors is what the people want to know. They want to know them all, so that they may separate the sheep from the goats.

Fresno Expositor.

The irrigators of Southern California know who are the leading opponents of their rights in the State Senate. They know that Kellogg, Clay, Webster, Taylor and Dennis Spencer head the gang. They know that this trio expect future preferment from the people, and they have finally made up their minds that not an irrigator's vote can they get for any purpose. These men find it possible to vote for measures of taxation favorable to the railroad company, but they cannot find it possible to vote for a bill in the interest of the people. The *Expositor* may ever be counted as against these, and other statesmen of their kind.

Fresno Expositor.

The action of Cross, of Nevada, in saddling the mining amendment on Assembly Bill No. 410, and known as the Wigginton Bill, will likely prove fatal. As amended, the section now reads:

"Section 2. Section 1422. That portion of the common law of England which relates to riparian rights is hereby declared to be repugnant to and inconsistent to the climate, topography, [and] the physical condition of this State, [and the necessities of the people thereof] and the laws concerning the appropriation of water for puposes of irrigation, and to that extent [forms no] part of such laws and the use of water for such purposes of irrigation is a public use."

As amended the bill will be opposed by the representatives of the "slickens" counties, and it looks as if the measure—the only one that can bring instant relief to the irrigation interests—will be defeated, as so few days remain of the session. The "statesmen" of the Senate will do well to remember that they are marked, and that every man who has not openly shown his hand in behalf of the irrigators will be classed as against them, and so will be "knifed" in future should they aspire for office.

The *Examiner* holds up Assemblymen McJunkin and Firebaugh, of San Francisco to public scorn for their repeated and persistent efforts to prevent irrigation legislation. Good.

San Jose Republican.

What are Riparian Rights?

It may not be out of order to give a definite answer to this question, for there are many who think they understand it who do not. The word "riparian" is derived from a Latin word meaning "river," or the "bank of a river," generally the latter. "Riparian rights," therefore, may be said to be the rights a man may have because of his living on the banks of a river or creek. The doctrine of riparian rights may be stated as follows: The owner of land owns the water running through it, and the owner of land higher up the stream cannot reduce its volume or impair its quantity to his detriment. The application of this doctrine in this State has been limited to two conditions—where a ditch company appropriated the water for irrigation purposes five years before the riparian owner complained, he is estopped by the statute of limitation; and, second, where the riparian owner cannot show actual damage by the withdrawal of water from the stream by an appropriator higher up, he cannot claim an injunction against the appropriator. Riparian rights are found often to interfere with what appear to be the rights of others who do not own land on the river bank; for those who are not on the bank might often be able to use the water for irrigation with profit if allowed to take it out farther up the stream. This is the "irrigation" question, stated in a general way, that has been agitating our Legislature—how to give the man who is not on the bank of the stream a chance at the water. It is now pretty certain that nothing will be done this session.

Modesto Republican.

Anti-Monopoly Senators.

The friends of the water and land monopolists in the Senate, thus far, have managed to avoid placing themselves on the record against irrigation by parliamentary tactics. Occasionally, however, one of them shows his hand. The other day the anti-monopoly Senator from Napa, Dennis Spencer, so far forgot himself as to make a pathetic and tearful appeal in behalf of Miller & Lux. Of course, the Hon. gentleman would like to have the people believe that his remarks were of a general nature, and applied to monopolists generally, and not to Miller & Lux in particular. Be that as it may, there is no getting around the fact that his speech was in the interest of the water monopolists, and as Miller & Lux are to be the greatest beneficiaries by the Hon. Senator's speech, it is but fair to presume that he drew his inspiration from those gentlemen. There are other honorable Senators who have been somewhat conspicuous in their opposition to irrigation measures. Among them we find the names of Taylor and Kellogg. Now, all of these gentlemen may, and no doubt have political aspirations, and they may as well make up their minds now, that the irrigators will go for their scalps, as surely as they ever show their heads for office. The Fresno *Expositor*, in this connection, says:

“The *Expositor* may ever be contented as against these, and other statesmen of their kind.” So say we.

WHAT a blessing it is to have such an abundance of water flowing down to the sea in undisturbed grandeur; but more especially when a dry year puts in an appearance. See Senator Dennis Spencer's speech against irrigation.

DENNIS SPENCER, and men of his ilk, by courtesy called Hon., are fairly entitled to the name of prohibitionists. They favor the prohibition of the use of water, except by the favored few.

Santa Ana Standard.

Our legislature is getting down to business. All of the irrigation measures pending in the lower house were passed on Tuesday by large majorities, but they have to run the risk of being butchered in the Senate by men who are owned and controlled by capitalists and corporations.

Santa Barbara Press.

The bill to make irrigation lawful and possible passed the Assembly by the following vote:

Ayes—Messrs. Ashe, Banbury, Barnes, Barnett, Buhlert, Carter of Contra Costa, Clark, Cook, Corcoran, Daley, Deveny, De Witt, Dooling, Franklin, French, Goucher, Gregory, Hazard, Henley, Hunt, Hussey, Johnson, Jordan, Kalben, Lafferty, Long, Loud, Lovell, May, McDonald, McGlashan, McLean, McMurray, Mears, Moffitt, Munday, Paterson, Pallet, Pyle, Reeves, Roseberry, Russ, Sullivan, Swayne, Torrey, Van Voorhies, Watson, of Eldorado; Ward, of San Francisco; Weaver, Woodward, Yule, and Mr. Speaker—51.

Noes—Messrs. Allen, Colby, Coleman, Davis, Ellison, Firebaugh, Heath, Henry, Haywood, Hollister, Jones, McJunken, Walrath, Watson, of Alameda, Ward, of Butte, and Wood—16.

Riverside Press and Horticulturist.

Honor to Whom Honor is Due.

The irrigation question has become the great problem of the State. It has been the one great question which has occupied the time and careful consideration of the present Legislature assembled at Sacramento. It has been the only great question before that body, the election of a United States Senator even being but a little ripple as compared with the great tidal wave of irrigation that has swept over the State.

The Tehama Democrat.

Who are They ?

That staunch old advocate of the people's rights, the San Francisco *Examiner*, asks the following pertinent questions :

The reports from Sacramento show that some twelve or fifteen Senators are "dodging" the irrigation bills by refraining from voting. Yet, when the Heath Amendment to reduce railroad taxes was passed, every Senator was in his seat and voted. The passage of the irrigation bills is one of as much importance to the people as the adoption of the Heath Amendment is to the railroad company. Is the inference to be drawn that the Senate believes in making the public interest subordinate to that of the railroad? Explanation seems to have been the order of the day at the final roll-call upon the Heath amendment. Many Senators took occasion to explain their votes. It would not be entirely uncalled for if the Senators not voting upon the irrigation bills would rise and explain their silence. There is more or less curiosity to know who these men are that are more friendly to the monopoly than to the people.

S. F. Examiner.

ACT.

It is about time that that extraordinary body, presumed to represent the people of California, and now holding its meetings in Sacramento under the name of the Legislature of California, should begin to legislate for the people who elected them. Every railroad measure has been passed. Every appropriation, except those from which the people of the State, as a whole, could derive some benefit, has met with the most favorable consideration; every retainer has been given a clerkship; nearly every raid upon the Treasury has been successful. Commercially speaking, the Legislature has, perhaps, been to some people a grand financial success. As the monopoly, the lobby, the clerks, porters and parties asking appropriations have been wholly and fully satisfied, it is not too much to ask that the Legislature now take action on the irrigation question. There has certainly been time enough to consider the matter. The people are demanding, and have a right to demand that something shall be done. The time has come when all masquerading must end. We simply ask that the tactics which have blocked irrigation legislation be abandoned, and that the irrigation measures be permitted to come up for final discussion and decision. The legislators who have shown such eagerness to forward monopoly measures in the past should now be willing to permit the people's measure to come before the Legislature for action one way or the other. We trust that hereafter no legislator who was elected as a Democrat will record his vote against action on the irrigation bills.

S. F. Chronicle.

The Legislature.

On Thursday last the sixty days for which members of the Legislature are constitutionally entitled to draw pay expired. Since then they have been serving for love. Speaker Parks, looking at the situation from the standpoint of the Drainage claims, ruled some time ago that "sixty days" meant sixty working days. But the Speaker, who, with all his faults, is not a fool, knows that the Constitution will not bear any such construction, and Controller Dunn will not draw his warrant in favor of any member for a larger sum than \$480, no matter how long the session lasts. We may therefore feel pretty sure that the session will end to-morrow or next day, and the irrigation measures will have to go to another Legislature. It will cause much trouble in the southern counties, but the event will be chiefly memorable from the slaughter of ambitious politicians which it will involve. Many a budding statesman will trace the overthrow of his prospects in life to the mistake he made in opposing irrigation in 1885.

There is no prospect of an extra session. The men who resisted and defeated irrigation measures at the regular session would resist and defeat them at an extra session. Whitney would be there with a bill to block the way, and Spencer, of Napa, would exhaust the patience of the Senate with more harangues to show that irrigation in the south would prove fatal to the interests of some peanut and candy store in the lovely town of Napa. Cox would tell the story of his cows which died of thirst, owing to the diversion of their water supply; and Langford and Baldwin would rally to the support of acquired rights. In a word, there would be men enough to defeat legislation. The irrigators must make no mistake.

Sierra Mountain Messenger.

Warm Contest.

The irrigationists and "raparians" [as yerrunkle Stidger phrases it], are at it, hot foot in the Legislature. While it is of no direct personal interest to many of Sierra county people, there is considerable quiet satisfaction to be derived from the fact that the rabid anti-mining faction is split square in two in the middle. The riparian doctrine was a fine thing as long as it affected nobody but the "vandal" miner, but when the principle was invoked to prevent the irrigationist from getting water to irrigate their dry land, the matter assumed a different aspect. The riparian law is an old English arrangement, and is doubtless well suited to a country that is fortunate if it gets thirty fair days in a year, but is not so well adapted to a country where the conditions are reversed. We hope the irrigationists will win, for unless they do, large sections of several of the Southern counties will become depopulated, and will return to the condition of a howling wilderness, from which they have been redeemed.

Los Angeles Herald.

The tactics resorted to by obstructionists in the Assembly for the purpose of staving off action on the Irrigation bill, though persistent, serve only to make the friends of the cause more in earnest than ever. Some of the obstructionists clutch at very fragile straws. One ingenious gentleman, when at length the previous question was moved for the purpose of putting an end to the farcical amendments offered by the opposition, rose to remark that he had nothing to say on the motion, and was reminded promptly by the Speaker that he could not say anything, being out of order. The question was put. It is not probable that the passage of the bill can now be prevented by the kind of tactics mentioned. Should the bill become a law, as there is now every reason to hope and believe, our people will have cause to be grateful to the gentlemen who composed the Fresno Convention, and to those now aiding in the passage of the bill.

Contra Costa Gazette.

The Irrigation Bill.

We doubt, as stated last week, if the legislation now being sought in aid of the irrigators will prove altogether effective. But it is a movement in the right direction, and any existing defects in the Irrigation District Bill may be remedied two years hence. In the meanwhile it is a good idea to keep before us the legislators who are working for the best interests of the farmers and the State. The bill passed the Assembly by the following votes:

For irrigation—Ashe, Banbury, Barnes, Barnet, Buhlert, Carter of Contra Costa, Clark, Cook, Corcoran, Daley, Daveney, DeWitt, Dooling, Franklin, French, Goucher, Gregory, Hazard, Henley, Hunt, Hussey, Johnson, Kalben, Laffarty, Long, Loud, Lovell, May, McDonald, McGlashan, McMurray, Mears, Moffat, Munday, Patterson, Pellet, Pyle, Reeves, Roseberry, Russ, Sullivan, Swayne, Torrey, Van Voorhies, Watson of El Dorado, Ward of San Francisco; Weaver, Woodward, Yule, and Parks—50.

Against irrigation—Allen, Colby, Coleman, Davis, Ellison, Firebaugh, Jordan, Heath, Henry, Heywood, Hollister, Jones, McJunkin, Walrath, Watson of Alameda, Ward of Butte, and Wood.

Pacific Rural Press.

Irrigation Laws.

This past week has seen quite a gratifying advancement in irrigation legislation at Sacramento. Setting apart a special portion of each day to these important matters has proved a wise arrangement. The will of the people has been signified by numerous petitions and resolutions, and by the sending of committees to assure the legislators of the disposition of the various districts represented. So far as we have observed, these expressions have been largely

on the side of the Fresno Convention bills, or at least in the affirmation of the principle embodied in them.

The Assembly has proceeded further than the Senate up to the time of writing on Wednesday. Last night in the Assembly, on motion of Weaver, the irrigation bills were taken up and finally passed; No. 171 repealing the common law of England in as far as it guarantees riparian owners any rights in this State, by a vote of 52 yeas to 11 nays; and bill 170, providing for the diversion of water and the adjudication of all water rights, by the same vote. The constitutional amendment, placing the minimum rate that may be allowed corporations for water supplied for irrigation or domestic purposes at seven per cent. on the investment in said works, was finally passed by a vote of 56 yeas to 13 nays.

Santa Barbara Republican.

Check!

Our evening contemporary says: "The Republicans have complete control of the present Legislature." For pure unadulterated cheek commend us to the *News*. What has become of the twenty Democratic Senators the Democracy made so much talk about before the convening of the present session of the Legislature? Those unterrified, incorruptible twenty, with the President of the Senate, are a majority of that body, which gives the Democracy the control, and they made it their boast, before the Legislature met, that the Senate would be Democratic, and would hold the "black Republican abolition Assembly in check." Well, the Democratic Senate has held the Republican Assembly in check sure enough. The Republican Assembly passed the irrigation bills; bills that had for their object the emancipation of the people of this State from the grinding exactions of a soulless set of land sharks and water monopolists. What fate awaited these bills in the Democratic anti-monopoly Senate? Why, defeat, as might have been expected. Yes, the Democratic Senate is holding the Republican Assembly in check, with a blank to it. It appears that what was meant by holding the "Republican Assembly in check," was that the Democratic Senate would protect the water monopolists from any interference with their monopoly by the Assembly. Great is water monopoly, and the Democracy is its friend.

Pacific Rural Press.

Irrigation.

The irrigation issue at Sacramento has apparently been lost for this session. One week ago there seemed a good chance of passing the bills necessary for placing this matter upon a sound footing, but by some sort of legislative *hocus-pocus*, the strength which was then shown has been fritted away, and those who labored all winter to secure the desired enactments, have apparently given up the fight. What will be the ultimate result cannot be foreseen,

but it can hardly help spreading great distrust and disappointment throughout the irrigated districts until some relief can come from some quarter. Mr. J. Dr. Barth Shorb, who has given the last three months to solid work in the interest of the irrigators, expressed his views to a reporter of the *Chronicle* on Tuesday, in referring to the total failure of irrigation legislation this session—he spoke quietly but very seriously. He did not disguise the fact that he entertained grave fears as to the result of the attempt which must soon be made to shut off the water from the irrigators drawing supplies from King's and other rivers. This, of course, is assuming that the decision of the Supreme Court in bank will confirm the decisions already made in the case of the riparian owners against the irrigators. This has been a dry season where the water obtained from irrigation works is especially needed, and, as the irrigators believe they have acquired their rights under the law, and as to be deprived of them means absolute ruin to thousands, there will be serious trouble when the attempt is made to take the water out of their irrigating canals. The Supreme Court's decision must be made by the 12th of this month, following close upon the refusal of the Legislature to grant relief. Mr. Shorb concluded by saying that he had done all in his power to secure the passage of the Fresno bills, but had met a power in the Legislature which is supreme here and against which it is useless to strive.

Maxwell Colusa Star.

SACRAMENTO, February 25, 1885.

EDITOR STAR: The Legislative Committee of the State Irrigation Convention desire to convey to you their thanks and the gratitude of every irrigator in California for the kindly appreciation you have shown of the justice of their cause, and the substantial aid you have rendered them, through the columns of your paper. The subject of irrigation is the leading question of the day in this State, and is destined to overshadow all other political issues before the people. All far minded men are satisfied that the bills now before the Legislature, prepared by this committee, are the best yet proposed, and should pass. Their imperfections will become known by experience, and changes and amendments will become necessary in the future. The gigantic proportions which the irrigation interests have already assumed, together with the certainty of increase of the hundreds of thousands now interested, to millions in the not distant future, warrant the belief that henceforth the irrigation question will always be second to none.

The enemies of irrigation are leaving no stone unturned to defeat the popular will in the Legislature. Nothing will finally crush riparianism but unceasing efforts of those arrayed on the side of irrigation. Your record upon this subject assures us and the people of your continued and active support.

We herewith inclose a copy of the address of this committee, containing an appendix of expressions of the press upon irrigation. The lack of time

has necessarily made it impossible to obtain extracts from all papers which are on the people's side of the question. We hope in another pamphlet to present to the people the views of all the papers in the State.

Very respectfully,

J. DEBARTH SHORB,	H. S. DIXON,
J. F. WHARTON,	L. B. RUGGLES,
W. S. GREEN,	E. H. TUCKER,
R. D. HUDNUT,	D. ZUMWALT.

Legislative Committee of the State Irrigation Convention.

The San Francisco Call.

The Irrigation Bills.

The Irrigation Committee has issued a last appeal. There is time for the Senate to heed it, but no one expects it will. There is apparently a profound respect for vested rights in that body. Senators argue with a show of force, that the owners of lands along the banks of streams cannot lawfully be deprived of a portion of the water that they may desire to retain. In this water case there must be a compromise of rights. People went to work in this State and used water without knowing exactly what rights they had. There was a general understanding that the use of water would eventually be settled on the general principle of the greatest good to the greatest number. There are no fixed and uniform laws governing the use of water in different countries. One nation exacts one set of water laws and another another set with due regard to the conditions prevailing in each. In this State, water was appropriated for certain uses before any laws were made. It was by this appropriation and use that the most profitable use of water could best be determined. The Irrigation Committee's address says that the people who went upon the arid deserts of California demonstrated that the State can be made to sustain a population equal to that of the entire Union at the present time. These people, then, have developed a use for water which we did not know to exist. We knew the arid deserts were there, but we did not know what they could be made to produce, by means of irrigation. The relative value of water to the general public for purposes of irrigation to the value of water running in streams to the same public, must enter largely into this question. What use of the water will do the most good? Individual rights in what the law gives individuals must be protected, but in this case the riparianist's rights are at best constructive or inferential. They assume that they have such and such rights because in some other country a set of laws which would give them such rights has been enacted. There is not a man claiming to own water through the ownership of land who did not become possessed of his land with the full knowledge that his right to water would be disputed. The first thing people did in this State was to take water out of its natural channel and conduct it where it would perform a more valuable service. Water was carried hundreds of miles in ditches and used in mining before a location of land was

made. The land locator could not know more than the water appropriator what would be the final determination of the question as to the title in water. The talk about vested rights under these circumstances is ill timed. Rights in water in this State have never been defined. The Supreme Court has given an interpretation of law based upon the common law of England. But the common law cannot be made to stand against a positive enactment; it only stands as law in cases where there is no positive enactment. The experiment of irrigation has now proceeded to that point which warrants final action as to the use of water. It has been demonstrated that water will do a greater good to a greater number when used for irrigation purposes than for any other purpose. The question for legislators to solve is if the interests of the few shall overcome the interests of the many. Is the development of the State to be arrested because a few men declare that when they located or purchased certain lands they understood that they acquired ownership of certain water? It is clear that these riparianists had no actual title to the water, but that they assumed that such title would be awarded to them by the courts. As a fundamental principle in law it may be said that the individual has no absolute right to water in its natural bed except for personal use. If there is but water enough to serve as a beverage for a community, the right of each individual is limited to the use of water for that purpose. An excess may be divided in the same way. But the individual may only acquire a property right in water when there is an excess above the wants of the community which may be made useful elsewhere by the investment of labor or money. The nature of that use should be finally determined by its comparative value for one purpose or another. The sooner the doctrine that the individual can acquire an ownership in water in its natural bed which he may appropriate to his own use without regard to the general good of the community is exploded the better. There has been too much of that kind of speculation in this State already.

San Francisco Chronicle.

The Vote on Irrigation.

Friday's vote on the motion in the State Senate to take up the Irrigation measures in preference to the swarm of jobs which have got precedence on the Senate file, enables us to classify members and will show the people where they belong. It goes without saying that six of the San Francisco Senators—Boone, Creighton, Days, Dougherty, Drum and Kelly—voted wrong. No one expected them to vote right. It is not their style. They know, or ought to know, that the irrigation of the southern counties is vital to the future prosperity of this city, but for reasons which all can conjecture, they voted not to take up the bills. Cross and Wallis, of Nevada, dealt a stab at the mining interest of their county by antagonizing the members from the south. They, like the San Franciscans, rarely vote right on anything, but they might have realized that before long the mining counties will want something, and that

it was bad policy to make enemies in advance of men who will have it in their power to deny their request for favors. What harm would it have done Nevada to let Kern and Tulare have water?

Some votes are inexplicable. Cox is understood to be a riparian owner; but Baldwin and Langford of San Joaquin, and Saxe of Santa Clara, represent communities which are as much interested in irrigation as any part of the State. There may be private interests in those counties which would be injured by a general system of irrigation, but Senators are supposed to represent counties, not companies. What purpose Spencer, of Napa, is driving at in his malicious opposition of all measures of irrigation, cannot be conceived. He passes for a man of brains. Can he not see that irrigation is going to be a vital issue, and that men who get squarely on the record against it had better order their political coffins at once.

The votes of Kellogg and DeLong are not worth discussing. They will go back to their constituents with the proud distinction of never once having voted right on any measure. But surely such sensible Senators as Taylor of Shasta and Chandler of Yuba will see that duty as well as common sense requires them to reconsider the position they have assumed. Shasta wants a great deal, and Taylor is supposed to want a little something. Is this the way to get it?

The irrigators have got the men once on the record. Let them try it again. If such measures as the public interest requires cannot be passed, let the people at all events be thoroughly informed who are the men that defeat them. Time moves slowly, but it moves, and the day of retribution, though deferred, will come at last.

Daily Alta California.

A Little More Patience.

The friends of irrigation in the Legislature now have the inside track. Thus far, the desperate efforts of the riparianists to adjourn without action have been futile. By patience and good management the irrigation bills can be passed through the coming week; to do this, however, business must be dispatched rapidly and without waste of time in useless talk. The policy of the riparian minority will continue to be delay. They will attempt to wear members out by filibustering motions and long-winded speeches. The general questions involved have been fully and exhaustively debated. No one who has participated either as speaker or listener is now uninformed as to the relative merits of riparianism and irrigation. The time has come when argument is no longer effective. Those who have taken the riparian side of the question are no sooner refuted in one objection than they raise another.

Having exhausted all the feeble arguments the riparian attorneys have been able to invent, they are now wearying the Senate with tiresome reiterations of their exploded fallacies. For the remainder of the session less talking and the more voting, the sooner and more satisfactory will be the result. One

riparian Senator is opposing the bills from motives of petty spite. Another treats the irrigation problem as simply of local interest. A third trembles lest the Supreme Court take offense at what he is pleased to term an attempt to usurp judicial functions and influence the judgment of the Court. It is suggested here, parenthetically, that the most of the laws enacted by the State Legislature for the government of the people have more or less influence upon the action of the Courts. To argue with or try to convince such men as these is simply waste of breath. To earn the gratitude of the people and carry the irrigation bills through to a successful issue, all that is necessary is a little patience, something of a firmness, a great deal of attentive silence and some solid voting. He is a poor friend of irrigation who cannot give a few days more of his time to the business of the State. A vote for adjournment is a vote against irrigation.

The irrigators have it in their power to keep the Legislature in session until the irrigation bills are reached and passed upon, and it ought to be done. It is a great cause and should not be abandoned without a stubborn fight.

Senator Cross, in a speech in opposition to the irrigation bills, gave utterance to the following Christian sentiment: "Let the people of the southern counties and their representatives feel the wrongs we have felt, may they suffer as we have suffered, and may the God who distributes his sunshine equally on our mountains and their plains hear them cry in vain for relief, until they award us that mercy they themselves claim." There is just one point in this worthy of notice. Senator Cross admits that the irrigated counties are suffering "wrong," and that their present demands are for relief from conditions of extreme hardship. In other words, Senator Cross grants the justice of the claims of the irrigators, but opposes any concessions to them.

The *Call* thinks that California ought to have been given a member of the Cabinet because her growing viticultural industry would have profited by having a representative. But how can California ask consideration from the Federal Government for interests which she herself treats with shameless disregard? The welfare of our vineyards in half of the fruit-growing counties depends on irrigation, and the State Senate vexatiously delays to pass the necessary irrigation laws, and threatens to adjourn leaving this duty unperformed. The benefits which the California vineyardists would receive from having a representative in Cleveland's Cabinet are distant and speculative compared with the benefits to be derived from a Legislature with honesty enough to respond to the obvious wants of the majority.

S. F. Call.

Cross Purposes.

The very able Senator from Nevada County seems to have mixed together two entirely separate propositions, viz: that to authorize the construction of dams to impound debris and that to authorize the use of water for irrigation

purposes. Mr. Cross finds that the interdict of hydraulic mining has worked considerable hardships upon a portion of his constituents, and as a means of getting even, he opposed the irrigation bills. While we can make some allowance for a Senator who goes wrong, on a proposition that his immediate clients favor, we beg leave to remark that statesmen do not permit a local interest to warp their judgment as to matters of State or national policy. The fact that hydraulic mining has been prohibited on account of the destruction of property inseparable from its prosecution has no possible connection with the proposition to authorize the appropriation of water for irrigation purposes. Senator Cross appears now in the light of a legislator who aided to defeat a bill he might under other circumstances have favored in order to punish certain other legislators for not supporting his own pet measure.

San Francisco Examiner.

Irrigation Bills in the Senate.

It is reported from Sacramento that the Republican Senators have taken united party action, which if true and strictly carried out, will have an important effect upon the pending irrigation bills. Their future course, it is said, will be to oppose any further dilatory practices to prevent the bills from being reached. This, if report be true, was the informal conclusion reached by the caucus of Republican Senators. But it is stated that, in the same conference, a formal understanding was reached that henceforth, during the remaining days of the session, they will refuse to take up any bills out of the regular order. This reported formal action of the republican caucus may not be founded on fact, or it may be that it is only intended as a general policy, to which an exception in favor of the irrigation bills will be permitted to be made by individual members favoring irrigation. At all events, if this action has been taken, it places the Republican party in a position to claim that the bills were defeated by Democratic obstructionists, if any Democrat be the cause of delay. This will be difficult to explain away before the people, although this eleventh hour Republican concession comes too late to permit the bills being reached in the regular order. And here is the opportunity of the Democratic party. If every Democratic Senator who has heretofore opposed the bills will refrain from dilatory tactics; if he will go a step further, vote to take up the bills out of the regular order, and bring them to a final vote, he can, while reserving his own individual judgment as to the wisdom of the measures now proposed, and indicating it in his vote on the passage of the bills, render the party good service. Such a course would place the Democratic party before the people in better order than the Republican party, if the latter shall refuse to consider these bills second to none but the appropriation bills. It would be better for the people of the State if both parties were in full accord on this great question; but it behooves every Democrat of the Senate to place the position of his party in the vanguard, even to the partial sacrifice of his private opinions. A Senator who, even from honest conviction, votes against the irrigation bills,

will find it difficult to satisfy the the people by any explanation of his course. But a Senator who prevents a final vote, or contributes to such an event, will make explanation impossible, either to his party or to the people.

Sacramento Record-Union.

The Irrigation Problem.

The subject of irrigation has been the one perplexing question before the Legislature. It is not to be denied by any one that the need of a safe system of irrigation is a great one in many sections of the State. In establishing such a system, however, the Legislature has found itself beset by two apparently conflicting interests, technically known as those of the appropriators and the riparianists. The equities of each have been freely debated—we may say too freely discussed, since intemperate heat has awakened antagonisms that should not be stimulated. We have believed, and do believe, that the Legislature would have been nearer a wise solution of the problem to-day had it been badgered less by passionate debates in the press and elsewhere. It is a question to which must be brought the calmest deliberation and the profoundest wisdom. No legislator need be shamed in the confession that it is perplexing and involved in doubt. Its final settlement must be the result of concessions and compromises. We believe these all possible, and that the interests now at war may be adjusted so as to give to the riparian owner for his needs, and to the irrigator a just quota of water; or, as one correspondent has suggested, so to merge interests as to distribute the water with a due regard to the needs of all. We are perfectly aware that to accomplish this is no easy task, nor will its accomplishment be unattended by friction. To evolve a perfect system at once is not possible, but by wise concessions and adjustments an approach may be made to it. The use of water to the stimulation of earth growth must be made as broad as is possibly consistent with the common weal.

There have been in public debate suggestions made and plans outlined upon which the Legislature might have grounded the basic structure for a system acceptable to the people. We have faith that this will be done; that out of all this contention good must come; that the waters of the State proper to be taken for irrigation will be utilized to the fullest extent in increasing production, and that we will secure a system under which their volume may be augmented by storage. We have faith in the right solution of the present problems being worked out. If it is not done now it will be a cause for profound regret. The whole State is interested in the founding of an irrigation system and its practical working. It means increased population, increased production, increased wealth, decreased taxation and full development. The whole State is interested in so building the system that no man shall suffer irreparable injury, and that the greatest good possible shall accrue to the largest possible number.

Modesto Republican.

The End.

According to the latest news from Sacramento, the irrigationists are defeated in the Senate, which will, in all probability, put an end to the irrigation fight, for this session, at least. It is greatly to be regretted that those Senators who have opposed irrigation could not have been brought to book and forced to place themselves on the record, so the people could know for a certainty who they are. Bad management on the part of those having the irrigation bills in charge, in the Senate, is said to have been the cause of the disaster. The vote was taken in Committee of the Whole, consequently no roll call could be had; hence there is no official record of the vote by name. It is only known that there were 13 votes in favor of reporting favorably on the bill, and 17 against it. Ten refused, absolutely, to vote at all, and as there can be no roll call, they could not be made to vote. So ends practically the irrigation fight.

S. F. Examiner.

The Common Law.

It has been satisfactorily shown that the common law of England was intended to be adopted in this State only so far as applicable to our condition and necessities. The courts, in settling whether or not any given portion of the common law is to stand as the rule of decision to them, must ascertain and define the law, and also determine what are in fact our condition and necessities. The one is a question of law, and the other a question of fact. When each is determined the courts are then ready to form their conclusions as to the applicability of the law to the fact. It is no invasion of the rightful province of the judiciary for the people to assist in determining the fact. No better source of information as to their condition and wants can be found than the people collectively speaking. The Legislature represents the people, and may well assume to speak for them. The common law relating to riparian rights is clearly defined by the Courts so that it (the Legislature) may easily become acquainted with it. The fact that the portion of the common law which relates to riparian rights, as it is claimed to be administered in England, is repugnant to and inconsistent with the climate, topography, physical condition and necessities of the State cannot be successfully controverted. If it be the fact, why should the Legislature not so declare? While it is an undoubted, existing fact, many of the Courts have refused to recognize it, and some, among them the Court of last resort of the State, have yet to finally determine the question. Such a declaration is contained in Section 2, of Assembly Bill 410. It is not an *ex post facto* declaration of law. It is a declaratory assertion that the fact exists. There can be no constitutional objection made to such a declaration. If the Courts see fit to reject it as evidence of the fact, that ends the matter. But it seems that the Judicial Department of the Government ought to give great weight to the positive assertion made

by the chosen representatives of the sovereign people, that irrigation is a climatic, physical, and absolute necessity to the State. Such a declaration cannot result in harm, and may avail to save the irrigating sections of the State from the fatally destructive application of the doctrine of riparian rights. The intelligent lawyers in the Legislature must be able to recognize the difference between an *ex post facto* declaration of law and a legislative affirmation of an existing fact.

The Galt Weekly Gazette.

Irrigation vs. Riparianism.

This case is now engaging the earnest attention of the whole people of California, and almost the entire population of our great valleys are plaintiffs in the case. Their cause is a just one and popular feeling is with them. No one, though saturated with the law of riparian ownership, will deny that the use of water for irrigating purposes on the great plains of the Sacramento and San Joaquin valleys is a beneficial use. No one will deny that many of the dry and sterile lands of these regions, now unproductive for want of water, will, by its use, be turned into green and refreshing oases. It would cover these lands with a new growth of timber, verdure, gardens, vineyards and happy homes. The gloomy, uninviting unproductive desert would blossom with life and vigor, promise and plenty. But how shall all this be done? The riparian owner is now the keeper of the flood-gates which, if opened, would infuse vigor and vitality into a region now paralyzed with heat and drought. And his office is a perpetual one. He seems to have a vested interest in it forever. The law gave it to him, but the law is reluctant to take it away. The common law of England and the Supreme Court of our own State declares in favor of the riparian owner. And it is this apparently impregnable vested right of a comparatively few riparian owners, as opposed to the thousands now famishing for water, that constitutes one of the most serious and profound problems of the age. The whole water question resolves itself into the one as to the use and extent of the use. We concede that vested rights to property in any form ought not to be lightly taken away; and the judgments of Courts should generally remain undisturbed. But the march of civilization controls all law; and the law should be so modified and expanded as to protect the millions of people now scattering over the earth's surface. They cannot all be riparian owners; they cannot all look upon the sheen of running waters; they cannot all sit upon their own doorsteps and dip their drink from pellucid streams. The chief merit of the common law is its flexibility and adaptability to different conditions and necessities; and a liberal application of this merit should be made in California. If this be impossible, the Legislature ought to declare the use of water for purposes of irrigation to be a public use. A private house in a burning city may be lawfully destroyed to check the spread of the conflagration. Why not take, with due compensation, the riparian's property, for the purpose of avoiding the

poverty, want, famine and devastation which is sure to come to thousands of families unless they can irrigate? And all this under the right of eminent domain.

Los Angeles Daily Times.

Irrigation, Unpaid Taxes and the Railroads.

In an interview between a *Times* reporter and Charles Crocker, President of the Southern Pacific Railroad, which appeared in yesterday's issue of this paper, the railroad "magnet," being asked, "What do you think of the work of the Legislature?" replied that he considered the action of the Senate in neglecting to pass the irrigation bills "an outrage upon the people." Mr. Crocker then went on to give reason for his opinion, putting himself squarely on record as being in full sympathy with the irrigationists, and, therefore, with the people of Southern California as a mass.

The Merced Star.

The *Modesto Republican* says the latest advices from Sacramento indicate the defeat of the irrigationists, which will, in all probability, put an end to the irrigation, for this session, at least. It is greatly to be regretted that those Senators who have opposed irrigation could not have been brought to book, and forced to place themselves on the record, so the people will know for a certainty who they are. Bad management on the part of those having the irrigation bills in charge, in the Senate, is said to have been the cause of the disaster. The vote was taken in Committee of the Whole, consequently no roll call could be had; hence there is no official record of the vote by name. It is only known that there were 13 votes in favor of reporting favorably on the bill, and 17 against it. Ten refused absolutely to vote at all, and there being no roll call they could not be made to vote. So ends, practically, the irrigation fight.

San Francisco Alta.

Put them on Record.

Assembly bill 410 is the key to the irrigation situation. It is sheer nonsense to talk about irrigating if riparian rights according to the English law are to prevail in this State. Whether it be finally resolved to confirm the doctrine of appropriation, or establish some other system of distributing water for irrigation, whatever course is to be adopted, the riparian doctrine stands in the way. Assembly bill 410 proposes to break down this barrier to irrigation, without qualification or hesitation. With this bill once on the statute books, riparianism becomes a thing of the past, and in no other way can any system of irrigation obtain a sure foothold in the State. The resistance to the passage of this bill is not so strong in number as to defeat it, if a

vote could be had. The strength of the opposition lies in their power to prevent action. If the bill fails of passage at this session, it will come up at the next. The people are for it. They will elect to the next Legislature those whom they believe to be its friends, and they will defeat its known enemies. The Assembly is already upon the record. The Senate has yet to declare itself, by a yea and nay vote, upon any direct question which absolutely draws the line between the friends of the bill and its enemies. The bill is now on the general file of the Senate. Ahead of it on the file there is no measure that comes within gunshot of being of as vital importance. There is no excuse for not taking it up out of its order and ahead of all other bills. A motion to this effect would reveal its certain enemies. If such a motion was carried, it would be certain, with proper management, to reach a vote where every Senator would be forced to array himself positively on one side or the other. The irrigation leaders must force such a vote. The people must not be left in the dark, lest they punish the innocent as the guilty.

There is no necessity for an extra session of the Legislature. The irrigation bills and all other necessary legislation can be passed if the regular session is continued a few days. The members will have to serve without pay, but what of that? They have not done their work yet, and should be glad of the opportunity to stay and finish it, even at the cost of a little personal inconvenience.

Fresno Expositor.

So far there is no riparian difficulties in Merced County. The West Side canals take the water from the San Joaquin river, and although in exceptionally dry seasons, about all the water of that stream is turned into the canal, there have been no complaints from the riparian owners below the place of diversion. The Merced river furnishes an abundance of water in early summer. The water taken from this stream by the present canal even at low stages of the river is sufficient to irrigate and insure permanent fertility to a large area of land. Merced has one advantage over counties lying further south—there is no present or prospective litigation over water rights. So says the *Merced Star*. The *Expositor* opines that as soon as Merced county gets its irrigating canals in effective shape, some "dog-in-the-manger" dwelling on the banks of its streams will step out and demand that the water shall flow by his domains that he may listen to its murmur.

San Diego Sun.

It is believed that the irrigation obstructionists in the Senate will succeed in preventing action being taken on irrigation bills during the present session. It is thought, however, that if the sixty Assemblymen on whom the irrigationists rely will sign a petition to the Governor asking for an extra session, agreeing that no constructive mileage will be charged, and that the

session will not be extended longer than ten days, the Governor will accede to the request.

San Francisco Examiner.

The Railroad Irrigation Bill.

Senator Whitney claims that his bill, "to declare the title to water in rivers, streams, lakes, and ponds, and the right to its use," is the result of much study, and of a sincere desire to offer a solution of the vexed problems. He assumes that, after all the discussion that has taken place, he is convinced "that the key to the intricacies of the situation will be found in his Senate Bill, No. 50. He would be right in his theory if, in all sections of the State, where irrigation is carried on, or is a necessity, the streams carried water enough to irrigate all irrigable lands and to supply all other uses to which water may be applied. It is unfortunate for the State that this theory is not founded on fact. It is because the water supply is at the present time insufficient for all that the existing controversy over the use of water has arisen. Senator Whitney's bill proposes that all shall have water, for all purposes, out of the running streams. This is not possible. The problem is how to distribute the waters of the streams so as to confer the greatest good on the greatest number without violating justice, and to apply such waters to absolute necessities. If there be any flowing waters of streams now put to uses which can be supplied from any other source, such uses as cannot be otherwise supplied should be given preference in the disposition of the streams. Now, it can be demonstrated beyond dispute that water for sustaining life, for domestic and sanitary uses, and for the watering of stock, which are preferred over irrigation by Senate Bill No. 50, can be obtained in other ways than from the natural streams. It can be shown with equal certainty that water for irrigation cannot be otherwise obtained. Such being the fact, how can any one contend that irrigation should not be given the preference over the other uses mentioned? It would take a volume to go through Senator Whitney's bill, and show the disastrous effect which it would have if put into practical operation. Theoretically, nothing could be more just. But if the only theory upon which it could operate successfully, and with justice to all, were based upon facts which have an existence, the bitter controversy over water rights in the Legislature and in the courts could never have arisen. Does not the unanimous opposition of every practical irrigator in the State familiar with the sources of our water supply convince thinking men that, whatever may have been Mr. Whitney's intentions in the premises, his bill cannot promote irrigation? It is a misnomer to call this an irrigation bill.

Senator Whitney is also reported as saying that, so far as he has been informed, the interests of the railroad corporations are considered by them as identical with the irrigators, and that he has never seen from them, or from any one acting in their behalf, the least indication of hostility to the interests of irrigation. If the railroad company favor this bill, it is certainly a very

unmistakable evidence of their hostility to irrigation. The bill, as framed, certainly enables them to pursue their usual and unerring course toward the people's interests. They have never failed, on any great public question, to meet the public with a smile and stab it under the fifth rib. They have in their hire attorneys by the dozen, who are practiced in framing laws purporting to mean one thing and actually effecting another. The Whitney bill is of this class.

Mendocino Dispatch Democrat.

Irrigation in California, is a problem that must be solved, but the Republican Legislature of to-day is not equal to the emergency. There is not a spot of land in the dry plains of the Sacramento and San Joaquin valleys, nor in the whole of Southern California, but can be made to yield bountifully for the support of man by the free use of water, but laws must be passed whereby its use can be governed and regulated, and the rights of the more enterprising citizens protected. The subject of irrigation is one of the leading issues that will engross the minds of our thinking leading men for many years, and when laws, which, at first, must be of a crude and imperfect nature, shall be perfected so that the greatest good will or can be accomplished, this State will have entered upon a period of unprecedented prosperity.

Daily Evening Expositor.

The California Senate found sufficient time to pass a bill to pay John Wilkins (colored), of San Francisco, \$500 for a \$40 horse that he carelessly drove into a hole on the water-front, but it has not yet been able to find time to pass any of the irrigation bills. John Wilkins' horse was probably more nearly within the scope of the comprehension of the majority of the Senators.

San Francisco Examiner.

The Legislature.

The Legislature now convened at Sacramento has fairly earned the reputation of being the worst and most reckless which has ever assembled. This statement, to those who remember what some of the California Legislatures have been, may seem harsh, but it is nevertheless true. Every measure of the railroad monopoly has been railroaded through without much friction, and with the speed of an express train. The railroad has had everything and the people nothing. Men heretofore considered honest have fallen by the wayside. The treasury has been raided unscrupulously; the people's money voted away in the shape of appropriation bills with unprecedented prodigality; irrigation measures which every one recognizes of supreme importance have been kept back by the railroad manipulators, in order that their own pet

measures might be forced on the people. The necessity for irrigation legislation is apparent to all. The right to appropriate water, not only for agricultural, but for mining purposes, is absolutely necessary to thousands and tens of thousands of people. Orchards which are now furnishing fruit that renders California famous; vineyards which are producing our best wines and raisins, and mines in the mining districts in the State depend upon and cannot be conducted without the use of water. There are towns and settlements all over the State which will be depopulated unless this water question is settled. Meetings of the people have been held on the subject, and petitions have been poured in upon the legislators begging for relief. But the legislative ears, attuned to monopoly music, have been deaf to the appeals of the people. The constitutional limit, so far as pay to the legislators is concerned, has expired. Exactly how a majority of the legislators are now making their expenses it is not necessary to discuss. A scrutiny of the bills which have passed, and, indeed, of the entire conduct of the majority of the legislators, will suggest many reasons why they prefer remaining at Sacramento to returning home and facing their constituents. There are some men in this Legislature who have made good records, but the majority of them are well advised in desiring to linger at the State Capital and prolong their official lives. The people will see hereafter that they will never be returned to misrepresent them.

San Francisco Alta.

Benefit of the Doubt.

Several Senators are devoting their energies to the full capacity to show that the irrigation bills are unconstitutional—especially Assembly bill 410. There are lawyers of the Senate equally as able as any opponent of the bills who maintain their constitutionality. It seems fair to say that such a conflict of opinion gives rise to a reasonable doubt in favor of the bills. Other Senators, even though they be lawyers, might take the wise and public spirited attitude attributed to Senator Johnson of Sonoma, and give the people the benefit of the doubt. These Senators who assert that there is no question but that portions of the bills are beyond a doubt unconstitutional, when construed literally to their full extent, lay themselves open to the charge, made by some, that their assertions are not made in good faith, when they pursue a course which prevents the Senate from deciding whether or not the bills are to become laws, either in whole or in part. The people of this State feel so strongly on this irrigation question that it is almost certain that, in the event of failure to pass even a single bill, any obstructionist or any opponent to the bills who goes again to the people will be told that they want no more representatives who cannot sacrifice technical notions to the sovereign will and the public necessity. They will be told that to whatever extent any of these bills are unconstitutional the Courts of the United States afford full protection. The Legislature ought, without hesitation, to go to

the very fullest constitutional limit in this legislation for the benefit of irrigation. Let the Courts mark the line where the constitutional ends and the unconstitutional begins.

Stockton Herald.

A San Joaquin Petition.

The following petition relating to irrigation was laid upon the desk of Senators Langford and Baldwin to-day: "*To Senators Baldwin and Langford of San Joaquin County:* The undersigned business men of Stockton, request you to support and vote for the irrigation bills now pending in the Senate, introduced by Senator Reddy, being the same as Assembly bills 440, 171 and 170, and the amendment to the water clause in the Constitution, and to do all in your power to secure their enactment at this session of the Legislature, and without further delay. We ask this because we believe those bills having the approval of the committee from the State Irrigation Convention, and being favored by the people of Southern California, are necessary to the prosperity of that portion of the State upon which the trade and commercial importance of Stockton is largely dependent. Signed, Moore & Smith, J. D. Peters, H. W. Weaver, J. M. Welch, Wm. H. Woodbridge, and sixty-two others."

Tulare Register.

We trust that the members of the present State Senate will exhibit a degree of common sense, be it ever so little, that will enable them to see the necessity of expunging from our laws every trace of the pernicious and selfish doctrine of riparian rights as construed by our courts.

Vallejo Evening Chronicle.

It begins to look as if the irrigation legislation prayed for by the people of the southern part of the State will fizzle out in the Senate. The Assembly passed the bills in the shape asked for, but the Senate has added amendments which will make the bill obnoxious to the irrigators themselves. It will be a great blow to the southern part of the country if the measures fail of passage or are loaded down with unfriendly amendments.

Anaheim Gazette.

Irrigation measures go on swimmingly in the Assembly. The bill providing for the discovery and adjudication of water rights and claims passed the Assembly by a vote of 53 to 10. The bill providing for the organization and control of water and irrigation districts was passed by a vote of 51 to 11. The constitutional amendment, which is part of the irrigation legislation, was passed by a vote of 56 to 13. The gist of these bills was published in the

Gazette some weeks ago. But it is barely possible that the bills will be wrecked in the Senate, in which body the riparian proprietors have some conspicuously able advocates, and they may, by parliamentary methods of obstruction, defeat all irrigation legislation. The pay of the Legislature stops in a few days, and it may adjourn.

Stockton Independent.

A Black Eye for Irrigation.

The Riparianists appear to have the upper hand of the Irrigationists in the Senate. Last night's dispatches say the Legislature will adjourn before the irrigation bills can be agreed upon by the Senate, and the only hope for their passage lies in the possibility of an extra session for that purpose. It is hardly probable an extra session will be called. This fight of the riparianists has not been conducted with a particle of fairness. The Senators enlisted against the irrigation bills have not met the issue squarely, or with any evidence that they were willing to have the controversy settled in a just and equitable way. They have resorted to obstruction proceedings that were only a bald pretence for judicial consideration, and will receive, as they merit, widespread condemnation.

Modesto Republican.

Their Record.

The water and land monopolists appear to have it all their own way in the Senate. What with bad management on the part of the friends (?) of irrigation, and the unfairness of the obstructionists, and other sufficient and weighty reasons, irrigation legislation is doomed, for this season, at least. The Democracy have at all times claimed to be the anti-monopoly party, *par excellence*. The Senate is Democratic; the Assembly is Republican. The Democratic party charges the Republican party with favoring monopoly? The Assembly passed the irrigation bills by large majorities. The Senate defeated those same bills. Now, in view of these facts, by what right does the Democracy arrogate to themselves the title of anti-monopoly party? The only real monopoly that can exist is the monopoly of water and land, and here we have the strange spectacle of an anti-monopoly Democratic Senate standing in with the water and land monopoly as against the people of the State.

The tactics resorted to by the obstructionists in the Senate is such that a vote by a call of the roll cannot be had; hence the names of those Senators who voted against irrigation cannot be known officially. But the people will remember that the Senate is Democratic, and in that body irrigation was defeated; thus placing the Democratic party on the record as the friend of the land and water monopolists. This record they cannot dodge, and the party will be called upon to face the music at future elections.

Kern County Californian.

Fiction and Fact.

When the riparian attorneys in the Legislature picture the deplorable condition of the old pioneer riparian-like Senator Cox and Miller and Lux, who in an early day, built his residence on the banks of some charming river, and created a garden of delight around him, should the irrigation bills become laws and his right to have this river flow past his premises be condemned and he paid for it in order that it may be brought out of its deep channel on to the adjoining arid plain and used for irrigation—his home destroyed, life blasted, etc.—the answer is, although it has never been made in the proper quarter:

There is not a man settled on the bank of a stream in Southern California who is not an appropriator and irrigator, and there is not a man so living in that part of the State who is not either a friend of, or at least, not an opponent, of the irrigation bills. As far as the streams of Southern California are of any benefit in the way of fertilizing the soil, flowing in their natural channels, the riparian proprietor might as well live twenty miles away. But let it be supposed, as the riparian attorneys state, that the land of the riparian proprietor is moistened and fertilized by the stream flowing in the natural channel, and that, taking advantage of this circumstance, he had created a Garden of Eden, and his right to have this stream even condemned for a greater use—to be brought upon the surface and used to irrigate and fertilize a wider area, would not the same right still remain to this riparian that every other member of the community enjoyed? He would have the right of appropriation. He could connect with the canal that diverted the stream and irrigate as his neighbors would do. The danger of his land being made desolate even under this given state of facts, which has no existence in reality, is a mere idle figment of the brain. There are no riparians in the sense of opposing these bills except Hon. Fred. Cox and Miller & Lux, all of them large appropriators of water and irrigators, who own lands at the ends of or sinks of the streams in the Tulare Valley, and under the riparian law, as there is nobody and no stream below them, expect to blackmail everybody above them. Should opportunity be given them to do this, it would be worth to them millions of dollars per annum.

The following item from the *Visalia Free Press*, furnished by a Traver correspondent, is suggestive. It shows that Senator Cox, while opposing irrigation in one direction, where he thinks it accords with his views of interest, in another where he thinks he is safe from the doctrine of riparianism that he invokes, that he is an irrigator. The *Press* says:

Clark & Cox are putting in the old Williams field of 9,000 acres to grain and alfalfa; about 2,000 acres will be devoted to the latter. They have let the contract for building side ditches to irrigate the whole tract, and the water will soon be on all parts of the farm if needed.

Sacramento Capital.

Where the Responsibility Will Rest.

The Republican Assembly has passed the irrigation bills by overwhelming majorities, and they are now before the Democratic Senate under so-called consideration. This latter body is proceeding with a slowness and deliberation supposed to be a peculiarity of the august Senatorial dignity, but which, considering the shortness of the session, if continued means the defeat of the bills. For some weeks these bills have been a special order daily in Committee of the Whole, yet practically only the first section of the first bill has been considered. This delay, in view of the magnitude of the interests requiring this legislation, can scarcely be too severely condemned. Why is it these gentlemen are so afraid of recording their votes on this question, for to judge by the words of the members gravely offering amendments in good faith, they all acknowledge the necessity of and favor the proposed legislation. It is absurd to say that forty minds cannot reach an agreement as readily and surely as eighty, unless it be that they do not want to. Possibly there may be some Senators who believe that by smothering this legislation by parliamentary tactics they will escape the political consequences of their act. We would assure them that this is a vain and delusive hope, for every one of them, open enemy or false friend, is marked and will be remembered by the public when they apply for further political favors. The question is not a political one in any sense, nor a sectional one, yet it cannot but prove detrimental to the Democratic party if the Senate, controlled by it, oppose itself to the legislation demanded by the great material interests of the State.

San Francisco Post.

Irrigation.—How the Railroad stands on the Question.—Interesting Interview with Colonel C. F. Crocker.—He Talks Right Out in Meeting.—Solid Railroad Interests.

Having exhausted other subjects of attack, the unfairly rabid anti-railroad press and politicians are now protesting loudly that the railroad company—meaning the Central Pacific Railroad, Southern Pacific Railroad and allies—is endeavoring to kill the irrigation bill. People who have followed the course of the Legislature cannot, of course, be deceived by so bald a falsehood; but there are those who will accept any uncontradicted statement as true, and lest they be deceived in this matter, it is necessary to state the true facts of the case. A Post reporter called on C. F. Crocker, Vice President and Director of the Southern Pacific Railroad and Central Pacific Railroad, to-day, and asked him point blank if the railroad company was in any way opposed to the passage of a bill protecting the irrigators of this State in the appropriation and beneficial use of water.

“We favor irrigation all the time, and these wild statements that we are opposed to necessary legislation to secure the use of water to irrigators are

utterly false and malicious," replied Mr. Crocker, with some warmth. "These charges of interference on our part to prevent the passage of the irrigation bill are made for a purpose. They are made to prejudice the people against us and to keep alive the agitation which has been made in the interest of a few selfish politicians, and which has retarded the extension of railroad building in this State, has kept out capital by its hostile attitude towards public improvement, and has indirectly resulted in the loss of large and important trade to this State."

"Will you state the exact position of the railroad company on the irrigation question?"

"Certainly I will, and I can speak advisedly, for the subject has been much discussed by our executive department. We are in favor of the widest possible use of water for irrigation, and heartily in accord with the sense of the Fresno Irrigation Convention. It does seem to me that it should be unnecessary for any one to ask our position on this matter, but our enemies are so unfair, so disingenuous, so regardless of truth in their anxiety to foment a popular feeling against us, that they will even run the risk of making charges against us as false on their face as any statement could be, and which will not stand for an instant, if the light of our self-interest and the record of our friends is applied."

"You speak of self-interest. What interest has your company in irrigation?"

"A greater interest than any other man or set of men—greater, in fact, than all other interests. We run and operate the S. P. R. R., a railroad 2,300 miles long. That 2,300 miles of road would not pay enough to keep the tracks in repair but for irrigation. Look at the territory it traverses, starting from the bay line. There is Stanislaus County, with millions of acres of dry land, now assessed at \$1 per acre, which is worth \$100 an acre as soon as water is put on it. Why, in Merced County alone, my father and myself and a few other members of the company, have spent over a million dollars on an irrigating canal, with which we expect to irrigate 170,000 acres of land, and increase the taxable value of the county at least \$16,830,000 as soon as the water is flowing. We will probably spend half a million more, for the canal is a huge undertaking, and the water has to be carried over and through a range of mountains. Now that water is running to waste in a swamp so full of malaria that human beings can only live there a few months in the year, but when our ditch is completed the swamp land can be tilled and the dry land will yield marvelous crops. We have land to sell there, and our railroad will carry its produce. What stronger interest could any set of men have in irrigation than that? Why, since our ditch was started real estate in Merced City has gone up 100 per cent. in value, and our shipments from that city have more than doubled. Take, for example, the next county—Fresno. Where once was a desert—on land which our company sold for less than a dollar an acre—there are now dozens of irrigated colonies, worth from \$150 to \$400 per acre. Settlement is close and healthy, the plain is dotted

with towns and villages, all of which yield a profit to our road. Should we work to kill that interest and relegate the land to an occasional grazing ground on which cattle will range that can be driven to market, and will not pay our road a cent in freight. It would be absurd to suppose that we would cut our throats in that manner, yet these enemies of ours would have the people so believe. Look at the next county—Tulare—with its million and a half of acres irrigated and producing an average of thirty-five bushels to the acre, every bushel of which, except the little used in the county, has to come over our road one way or the other. That whole country depends on irrigation, and think you the railroad would be the one to attempt to convert it into 'poor pasture land.'

“Look at the country south of Tulare. It all, except some small portion, depends on irrigation. What would Arizona and New Mexico be without artificial irrigation? It is absurd to suppose that we could fight our own interests by opposing irrigation. We favor it in every way, and are prepared to make sacrifices to insure its perpetuation. We would be willing to pay increased assessments if money was needed for reimbursing vested rights. I have had conversations with Mr. Shorb, the head of the irrigation movement, and he can testify that we are in full accord with his plans, and even while I was in New Orleans I telegraphed to our land agents to do all in their power to further the popular cause. Call it selfish interest, if you will, but whatever you choose to call it the fact remains, we are heartily in favor of irrigation, as opposed to riparian rights. If there was any reason for this attack upon us, I would not complain, but there is no reason at all. They have charged that some members of the Senate, whom they class as our friends, have voted against the bill. Suppose that was true, does it make us responsible? Because a Senator votes to give the railroad fair, or even favorable, treatment on one subject, that does not prove this company owns him and is responsible for him. ✓

It is absurd on the face, and an insult to every man in the Legislature to make such a suggestion. There is not a gentleman at Sacramento who has not at one time or another voted in favor of what are called railroad measures. Let me cite an instance: A certain Senator votes for what is known as a railroad bill. He also votes for the fireman's bill. What would be thought if the foreign insurance companies set up the claim that the railroad was active to have foreign companies taxed? Why, the suggestion would be laughed at. We have enough business of our own to attend to without bothering with the affairs of others, and I defy any one to show the slightest evidence that we have interfered with this irrigation business in any way, except to ask all of our friends to vote for the irrigators, and all statements to the contrary are false. But that is all we have done. We have not sought in this or any other matter to influence legislation. We are not in politics even for our own protection. We recognize that the people of the State are disposed to treat us fairly. We believe that the friction caused by misstatements has been smoothed away, and we are perfectly willing to trust ourselves in the hands

of the people, whose interests are identical with ours. We have no one to set up and no one to pull down. What we need we will ask for plainly and freely, and will trust alone to the merits of our request."

The Livermore Valley Review.

The address to the Legislature of the State of California, by the Legislative Irrigation Committee, is before us. It is a full report upon the question of irrigation, and the subject is discussed fully under the following heads: "Irrigation a Natural Want; Benefits of Irrigation; Injurious Consequences of Denial of Right of Irrigation; Customs and Usages, Irrespective of Law; The Law on the Subject." Next is the noted case of Coffin et al., vs. The Left-Hand Ditch Company. Then follows the opinions of the press on the subject of irrigation. They are all of the opinion that a well regulated system of irrigation must be established before the agricultural resources of the State can be fairly developed." The following on the irrigation contest from the *Record-Union*, is to the point, and expresses our sentiments:

"The people are agreeing upon the need for an irrigation system, and are all of one mind concerning the use for irrigation, of all waters that can be diverted to that purpose, consistently with the best interests of the State and all its citizens. When we come to methods, it is discovered to be the most difficult problem for solution that has yet presented. But we have faith that it will be solved. The future of the valleys needing irrigation, under a wise system of use of the waters, will be one of the greatest possibilities, wealth and prosperity. Where we now have hundreds of homes, we shall have thousands; where we now have one consumer, we shall have fifty or a hundred. Every interest, commercial or industrial, will be advanced, and all the people will be benefited. But not even can this glowing future be realized at the expense of the destruction of the navigable streams. They are necessary for commercial uses and sanitation; they secure to the interior commercial advantages not otherwise obtainable; they cheapen transportation; they build up trade; they are free highways, the heritage of all the people."

San Francisco Chronicle.

No More Extra Sessions.

The baffled irrigators talk of having an extra session called for the purpose of trying to pass their bills. It would be a mistake. Nothing can be done with the present Legislature. It would be as difficult to pass the irrigation measures sixty days from now as it is at present. The men will not change. It is no secret why the bills will not pass, and if an extra session were called the obstructionists would simply raise their terms. The only chance for the irrigators, if the bills fail, is to be sure to elect men to the next Legislature

upon whom they can rely. No tainted man, no man who is affiliated with the monopoly, no man whose character does not raise him above the suspicion of bribery, should be nominated, and if either party "nominates such a man his party associates should bolt the ticket and knife him.

It is very seldom that any good is done at an extra session. It is expensive and every one is impatient to go home. It is like a lesson set to a school boy on a holiday—his soul revolts against it. Strikers revel on such occasions. They know, too, that when an extra session is called somebody wants something very bad and they raise their price accordingly. Somebody congratulated a railroad man last June on the success of the monopoly in defeating legislation at the extra session last year. "Ah!" said the other, "you do not know what it cost. The scoundrels knew we were at their mercy."

Everybody will be sorry if the bills for irrigation fail to become laws and the business of supplying water to Southern California under a comprehensive system has to be deferred for two years more. But it would not mend matters to summon an extra session and it might be the occasion of the passage of some very bad bills, for the call would probably be broadened so as to embrace other subjects deemed important.

San Francisco Chronicle.

Why This Delay?

The committee from the Fresno convention has laid before the State Senate a last appeal to take up the irrigation bills. It may or may not be successful. From present appearances we should say it would not. There appears to be a set purpose on the part of the railway brigade to defeat all legislation for supplying water to Southern California. Why the monopoly should pursue this course is inexplicable. It is to the interest of the Southern Pacific that the resources of the country through which it runs should be developed. If any one will benefit by irrigation laws it will be the railroads, which is the largest landholder in the dry section of the State. Yet it is a fact which has escaped the attention of no careful reader of the Legislative proceedings that from the opening of the session to the present time the men who serve the monopoly have steadily obstructed the passage of these laws. They would have been much nearer their passage but for the absurd and ridiculous bill which Whitney—whom the monopoly oftenselects to do its work—introduced for the purpose of blocking their path. The anomaly can only be explained on the hypothesis that the irrigation bills were advocated by men who have been prominent as anti-monopolists, and that on this ground the railway tools determined to murder them.

Members of the Legislature may as well understand at once that for them it is a matter of political life or death. No member of the Legislature from Southern California who failed to give all possible aid and assistance to the passage of these bills can ever hope again to be nominated for office, and it will not be in Southern California alone that popular resentment will be shown.

San Francisco and every other town in the State is vitally concerned in the development of the southern counties. California's future largely depends on it. Last year has taught us that we cannot rely on wheat alone for prosperity. To hold our own in the race for success, we must increase our acreage of fruit and vines, and this cannot be done in the sections best suited to that branch of agriculture without irrigation. The men who, in obedience to the demand of the railway, render irrigation impossible are striking a blow at the progress of the whole State, and they will be punished accordingly.

Admonition, however, will probably fall on deaf ears. When the Legislature passed Heath's Amendment and Parks' Drainage Claim bill, members must have felt that they were bidding farewell to political life. There probably never was before, in any State of the Union a Legislature which exempted railroads from taxation, or one which postponed measures of general utility for the purpose of passing an Act to divide a quarter of a million among a parcel of speculators and their conspirators. Bad as many of the past Legislatures have been in this State, there never was one as bad as this. It therefore seems almost hopeless to expect at this late hour the prayer of the southern farmer will be heard.

Visalia Delta.

The Legislature and Irrigation.

The Assembly has done excellent work on irrigation legislation, but the Senate has accomplished nothing as yet. The members of the lower house from all the irrigating counties, and from many others in Northern California, have worked earnestly to have this matter settled. On Tuesday the bill providing for the discovery and adjudication of all diversions of State water was passed by a vote of 55 to 10; and the bill for the formation of water and irrigation districts was passed by a vote of 52 to 11. The Assembly constitutional amendment fixing the minimum charge at which County Supervisors can rate irrigation water supplied by works owned by others than irrigation districts at 7 per cent. on the investment, was also passed, by a vote of 56 to 13. The last-named completes the list of bills and amendments proposed by the State Irrigation Convention held at Fresno, so far as the Assembly is concerned. All but one of these have been sent to the Senate for action, but there every effort is being made to obstruct legislation on this matter by several Senators, although a number of influential members of that body are in sympathy with the majority in the Assembly, and are anxious to have the Senate take speedy and favorable action in the matter.

The metropolitan press still continues to give considerable space to the discussion of the irrigation question, and treats it more practically and intelligently than it did a few weeks ago. The whole State, including the sections where irrigation is a necessity, have learned much regarding this matter during the past three months. Several associations of business men have raised their voice in asking the Legislature to act in the matter during

the present session, and the presentation of the resolutions passed by them has not been without its effect. Directors of the Immigration Association, whose work lies in every part of the State, at a recent meeting adopted resolutions to the effect that although a uniform irrigation law seems impracticable, owing to the widely varying climate and topographical conditions of the State, yet, as an equitable distribution of water for irrigation purposes is essential to the agricultural development of some parts of the State, and the purpose of the Association may be injured by placing unwise restrictions upon the use of water for irrigation purposes, particularly in the San Joaquin Valley in Southern California, it was resolved that the San Francisco members of the Legislature be requested to use their best efforts to secure an economical and beneficial application of the available water supply, and to provide against excessive charges for the same.

Those members of the Legislature who are straining every nerve to kill the irrigation bills, are doing their best to cripple the prosperity of the State. There is a large area of the State that can be made productive by irrigation, and must remain almost worthless without it. The artificial use of water in such places will in no way affect water rights in non-irrigating parts of the State. And no injustice will be perpetrated on riparian owners or others by the working of the proposed laws, as will be seen by a careful reading of them.

Fresno Republican.

Dangerous Ground.

The Senate amendment to the bill repealing the statutory law recognizing the old common law of riparian rights, is the most dangerous move yet made against irrigation. It is more dangerous because it has upon the face of it the appearance of fairness. The amendment provides that at all times riparian proprietors are entitled to a sufficient flow of water by their premises for the use of their stock, etc. To those unacquainted with the natural conditions of the streams of Southern California, this proposition has the appearance of equity and justice. A large majority of the members of the Legislature are unacquainted with natural and other conditions of the irrigated portions of the State, hence the danger of their being misled.

As a matter of fact, the riparian claimants have no interests adverse to irrigators except in that they wish to be declared the owners of the waters of natural streams that they may exact tribute from those who would divert the water from its natural channel.

The few settlers along the high banks of the upper portions of the streams are not factors in this fight. They are almost universally in favor of irrigation, and admit that the general benefits which accrue from it more than compensate them for any real or imaginary loss in the diversion of water. The riparian claimants proper are the owners of large tracts of alleged swamp or overflowed lands at the lower end of the streams. During flood times in wet years, the water flowing through these channels fill small lakes and

swamps on which their lands are located. During these seasons they are only too anxious to have as much water as possible diverted. It is at such time that the irrigators have but little use for the water to apply to their rain-soaked lands. It is during the dry seasons that water must be had for irrigation, and it is during those seasons that the riparian owner can get no water, irrigation or no irrigation. There is no season so dry but that a considerable volume of water flows from the mountain reservoirs of snow and ice at the heads of these streams. In dashing down its steep and stony channels from the mountain tops, but little or no water is lost by evaporation or seepage. It would flow on through the deep channel in the higher plain without much loss, but when it reaches the great level plain it widens and spreads out into vast beds of quicksand into which the ordinary flow of water sinks and is as completely lost as though it had dashed over a precipice into the very depths of the earth. It never reaches the riparian land monopolist further down the stream, and is of no more use to him than if it had remained an ice glacier at the summit of the Sierras. He may want the water for the use of his stock at such times, but nature has so ordained that he cannot have it.

It is then that the irrigators find a most beneficial use for this otherwise useless water. With their canals they tap the flowing streams at the points where they issue from the mountains and the water is carried to the plains and makes fruitful thousands of acres of land that without it would be a desert waste. These are facts which the riparianist cannot controvert, and while they apply particularly to Kings and Kern rivers, they apply to many similiar streams in southern California.

Where, then, is the justice of this amendment? It gives the riparianists nothing, and yet takes the water from the irrigators at a time when they most need it. The Sacramento Capital shows a knowledge of the facts in the following comment on the proposed amendment:

“What is the effect, then, of this amendment? Is it not to give these alleged riparainists all they could get under the broadest construction of the common law? To give them water for stock and domestic puposes, when the streams are not in flood, and water is most needed for irrigation, would be to compel every drop to remain in the channels to sink in the sand long before it reached their lands, giving them power to levy tribute on the agricultural interests above them in millions of dollars annually. Besides all these riparianists—cattle owners—have long since found that the stagnant alkaline water festering in ponds, sloughs and tule swamps, under the burning sun of the dry season, is injurious to their stock; and have substituted with infinite pecunniary advantage the cold, pure water of artesian and other wells, which is found in abundance near the surface. The irrigation bills provide for the payment to them of all damage that may result from the diversion of water above them which must in time again reach them more permanently by percolation, as we have elsewhere shown; but with this, which would satisfy all men in every other walk of life actuated by the ordinary considerations of interest and business, they are not satisfied.”

[They are not satisfied because they want to be declared the absolute owners of all water in the flowing streams of the State. It would make them virtual owners of a vast empire in southern California, and that is something worthy of the ambition of men who have already a taste of monopoly. With such a prize in view they can afford to corrupt a few Legislatures, subsidize newspapers and hire attorneys. If there were nothing more at stake than the water they want for their stock, they would not lift a hand to perpetuate the riparian infamy.]

McClure's bill creating a commission to investigate the irrigation question, aside from the fact that it defeats the passage of laws necessary to the public welfare, is a humbug. It creates, at a large expense, a body to do work which can be better done by the State Engineer. Indeed, that most competent official has, during the past two years, given the question all the investigation necessary for intelligent legislative action. The McClure bill is simply a part of the programme of the riparian land monopolists, and has no other object than the defeat of irrigation laws.

San Bernardino Times.

It begins to look as though the Legislature would adjourn without definite action upon the only matter of importance that has as yet come before it—the irrigation bill. As the common law now stands, the farmers and horticulturists of Southern California are wholly at the mercy of parties below them on the stream, who may insist upon the undiminished flow of all water in its natural channel. The decision of the Supreme Court on the riparian question, if followed out to its legitimate conclusion, relegates Southern California to its original desert condition. Irrigation alone has made Southern California what it is—the garden of the Union. It has made thousands upon thousands of happy homes, where before was only a desert waste; it is increasing our population and wealth each year; it is all to us, and to this vital matter the Supreme Court has dealt a death blow. It is not probable that the Supreme Court will reverse its own rulings, and our only hope was in legislative action, and this hope looks now as if destined to frustration. What the result may be it is hard to tell. There are cranky individuals who may cause trouble by taking advantage of the Court's decision, and, though it may not benefit them, may injure their neighbors. And here is a fruitful source of trouble. Men who have spent years of their lives and thousands of dollars of money to build up homes, are not going to submit to so unjust a ruling, and see them laid waste without a struggle. The man who will not fight for his home does not deserve one, and brave men who have toiled for years to build one up will fight to maintain it. Take away their water interests and you take their homes, and this will not be submitted to. The general interest in Southern California is with the irrigators, for the reason that we have no use for running water for other purposes. We have no navigable streams, none that are worth much for manufacturers after they

leave the mountains, and hence public opinion will do much to define water rights, despite court rulings. But a door has been left open for trouble that should not have been; and the people put on the defensive, when the law should protect them in their rights to homes in peace. The Legislature should take action in the matter, and right the wrong that the courts—perhaps justly from a legal standpoint—have inflicted upon us. Common law is applicable in all sections where there is no statutory law. And it is here that the trouble comes. A ruling that would be eminently just and proper in one section, is grossly unjust in another, where conditions are opposite. In the east, and England, from whence we derive our common law, irrigation is not dreamed of. The streams have no use except for navigation or manufacturing purposes, and who diverts the water of them and decreases their flow injures his neighbors below him. The contrary is true in Southern California. Our streams are valuable only for irrigation. We must divert the water and consume it entirely. Hence a ruling that would suit in the east is wrong in the west. Yet it is made applicable to us because precedent has established it. The legislature has got to right this, or there will be trouble grow out of it in Southern California.

Modesto News.

Irrigation.

Assembly bills number 170 and 171 have been passed by that body, and now only need the concurrence of the Senate to become part of our statutory law. Bill No. 170 provides that water in our rivers may be diverted and appropriated to the uses and purposes of irrigation. The rights of riparian owners are thoroughly adjudicated and determined by this bill. Bill No. 171 repeals the common law in as far as it guarantees riparian owners exclusive water rights. These bills will now probably be brought up in the Senate at once, and immediate action demanded. If the Senate should see proper to pass the bills, then the matter, so far as legislation is concerned, would be settled. It would then but remain to be practically tested by those in whose behalf it has been desired. The Legislative Committee on Irrigation, and those who have interested themselves in behalf of this legislation, do not claim that these bills are absolutely perfect, but so far as we have learned, they deal with the question in an intelligent and fair manner, and will, without doubt, prove of great benefit to the people of this State, if incorporated into our statutes. The question of irrigation is one of vast importance to the people living in certain portions of this State, and the needs of these people imperatively demand legislative action at this time. The Legislature, so far, has done comparatively little good. But few measures have been passed by it, and none of any great importance. There has been a useless consumption of time and an enormous waste of public money, and the people have derived no substantial benefit. Before a final adjournment, the passage of the needed irrigation laws would at least par-

tially absolve the Legislature from the sins of past bad conduct. In this the Assembly has taken the initiative, and all commend it for its action on these bills. The Senate is yet to hear from, however. And it is not at all certain that that body will take the same view that has been expressed by the Assembly. The Senate is equally divided, politically, and the question of irrigation has not yet become, and should not be made, a partisan issue. Neither party is likely to take any stand against it. It is to be earnestly hoped that the desired legislation will be given to the people during the present session.

San Francisco Examiner.

The Condemnation of Water.

Objection has been made to the clauses in Senate Bill 410, declaring the use of water for irrigating purposes a public use and providing for its condemnation for such purposes under the provisions of the Code relating to eminent domain, upon the ground that these clauses are contrary to those sections of the Constitution of the United States and of the State which provide that private property shall not be taken for public use without just compensation. In so far as concerns the Federal Constitution, this objection is disposed of by the case of *Withers vs. Buckley*, reported in 20 Howard, United States, page 84, in which it is held that the provision mentioned was intended to prevent the Government of the United States from taking property for public uses without just compensation, and was not intended as a restraint upon State Governments.

The State Constitution provides that 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. This is an unlimited declaration that the use of water for sale, rental or distribution is public, and includes sale, rental or distribution for all purposes, and among them sale, rental or distribution for irrigation purposes. How can the Courts declare unconstitutional a law which is expressly and on terms authorized by the Constitution? No Judge on the bench will ever attempt to construe away a clause in the Constitution so direct and free from ambiguity as this. It cannot be limited by the Courts to what may hitherto have been deemed a public use. That would be to substitute a different proposition, so as to make the Constitution read, "the *public* use of water, etc., is a public use," instead of, as it now reads, "the *use* of water, etc., is a public use." This is too absurd to give it a thought. Besides, this is only another way of stating that the use of water for rental, sale and distribution for all purposes is a public necessity and will contribute to the general welfare of the community.

Even independent of this provision of the Constitution, there is good authority for asserting that the Legislature would be sustained by the Courts in declaring the use of water for irrigation purposes a public use. In *Olmstead vs. Camp* (33 Connecticut, 548) is found this language:

“In a broad, comprehensive view, such as has heretofore been taken of the construction of this clause of the declaration of rights, everything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the State, or which leads to the creation of towns and the creation of new resources for the employment of capital and labor, evidently contributes to the general welfare and the prosperity of the whole community, and is therefore a public use.”

In the same case it is again said:

“The question is asked, with great pertinence and propriety, What, then, is the limit of the legislative power under the clause which we have been considering, and what is the exact line between public and private uses? Our reply is that which has heretofore been quoted. From the nature of the case there can be no precise line. *The power requires a degree of elasticity to be capable of meeting new conditions and improvements, and the ever-increasing necessities of society.* The sole dependence must be on the presumed wisdom of the sovereign authority supervised, and in cases of gross error or extreme wrong, controlled by the dispassionate judgment of the Courts.

The Constitution has thus given the Legislature a power to apply the law of condemnation to the use of water, even it had no prior existence, and has deprived the Courts of the jurisdiction to say whether or not the use of water is a public use. It has been made possible to make the law of water rights meet “new conditions and improvements, and the ever-increasing necessities of society,” and to enable “this State to keep pace with others in the progress of improvements, and to render to its citizens the fullest opportunity for success in industrial competition.” The law of riparian rights, if it be more than a phantom here, must be made to yield to the superior necessities of the people. Those who have rights will be justly compensated, but the ancient doctrine which sustains them shall no longer give protection, further than to secure an equivalent in damages. The riparian owners who resist this equitable adjustment between their alleged rights and the public needs, may soon find confronting them a constitutional amendment which abolishes their claims without entitling them to compensation.

Alta California.

The Whitney Water Bill.

The Senate had under consideration yesterday a bill which, under the guise of friendship to the cause of irrigation, will, if passed, deprive the State of what little right the Supreme Court has left it to the use of running water for irrigation. The bill might properly be entitled “An Act to confirm the common law of riparian rights, to confer additional rights upon swamp land owners and cattle raisers, and to abolish irrigation.” There is not a syllable in the bill which merits the approval of any bona fide advocate of the application of water for irrigation purposes. Among the worst of all the

unwise provisions contained in the bill are sections 6, 7 and 8. They read as follows:

SEC. 6. The waters hereby declared to be the common property of the State are devoted to the sustaining of life, to domestic and sanitary uses, and to the watering of stock, which shall always be preferred uses.

SEC. 7. In the arid and agricultural portions of the State, subject to the preferred uses declared in the preceding section, all lands susceptible of irrigation from the waters therein mentioned are entitled to such waters for irrigation to the full requirement of the soil for agricultural purposes. Those parts of the State are declared to be arid, within the intent of this section, in which the increase of the agricultural products of the soil will compensate for the cost of construction and maintenance of the necessary means of artificial irrigation.

SEC. 8. The owner of lands watered by the natural overflow of a stream has a right, by ditches constructed so as to prevent waste in the channels above, to sufficient water for the reasonable irrigation of such lands during the times of such natural overflow.

Every word of these sections is destructive of the policy of devoting the water of our streams to irrigation. The substance of Section six had previously been the subject of discussion in the Senate, and in the form of an amendment to Assembly Bill 410, was defeated upon the sole ground that its practical effect would be to nullify any attempt to legalize irrigation. It was clearly demonstrated in debate that, from the nature and peculiarities of the streams in Southern California, if the amendment were adopted irrigation would have to be suspended for the benefit of the cattle-raisers. It was also made plain to the Senate that water for sustaining life, for domestic and sanitary purposes and for the watering of stock, can be easily and cheaply obtained by other means. Section seven merely reaffirms the preference against irrigation given by Section six. Section eight was evidently construed by one who has made a study of how to so legislate as to inflict a deadly injury to irrigation under pretense of doing good. The "lands watered by the natural overflow of a stream," means swamp lands, whether they be riparian lands or otherwise. The swamp lands overflowed by the streams of Southern California are so situated that, no matter whether the water is high or low, whether in time of freshet or in the dry season when water is scarce, if any water reaches the margin of the swamps into which the river empties, all of it spreads out over and overflows them. The consequence would be that under such a provision of the law the swamp land owner would become entitled to all the water of the river at all seasons of the year, to the exclusion of all others, and this without regard to whether or not such swamp land owner is a riparian proprietor or not. Whatever may be the design of the Whitney bill, its passage will give us a water law even more odious than the common law of riparian rights. It will receive the unanimous support of riparianists. Senator Whitney, who introduced the bill, evidently has misapprehended the practical effect which this bill would have upon irrigation, if made the law governing the rivers of the San Joaquin basin.

Daily Alta California.

The Brink of the Rubicon.

An eloquent appeal to the Senate in behalf of action upon the irrigation bills before adjournment, signed by the Executive Committee of the State Irrigation Convention, has been prepared and presented. Will the Senate respond? Are the filibustering tactics by which irrigation legislation has thus far been successfully subordinated to every small scheme and every petty measure of private interest to be allowed to stifle the willing action of a majority of the Senate, and to throttle the wishes of the people of the State? The time is short. The irrigation bills must either be taken up and passed immediately, or the session must be prolonged until they can be reached and acted upon. To adjourn without action, is to merit and receive the execrations of the great mass of the people. If the Legislature adjourns before taking up the bills the people will have to take up the fight in earnest. The causes of defeat will be analyzed. The proceedings of the Legislature will be closely scrutinized to get at the root of the reason why these bills have failed of passage, with a majority in their favor. Every vote and every word of each individual member will be subject to the severest criticism. Every means of publicity will be made use of to inform the people of the attitude of each individual member of the Legislature toward the irrigation bills. No member shall escape being weighed in the balance. Those whom the people find wanting may expect just retaliation. The motto of the irrigators in coming elections will be: "Let no guilty man escape."

In brief, the position of the irrigation bills is this: There are a majority of Senators in favor of their passage, but it requires a two-thirds majority to reach and pass them before the expiration of the sixty days of the session, and it is doubtful whether the majority can be obtained. If the Legislature will remain in session a few days after the per diem has stopped, the irrigation bills and all other important bills can be passed. By making a little personal sacrifice the members of the Legislature can do the State an inestimable service. Is it possible that they will adjourn and leave the most important part of their work undone?

Colusa Sun.

The Slickens Fight—A Retrospect.

When the people of the valley first began to protest against the destruction of their farms by the hydraulic mining process, their voice was so feeble as not to be heard by the nearest neighbor of the men being injured. Even those whose turn was to come next, would not lend an assistant hand. Mining was the great interest—farming the smaller. The Courts were appealed to, but men lived and died while the cases hung fire. Keyes, the pioneer in the suits, was buried in slickens, and his family lost the earnings

of his lifetime. The people of Marysville and Sutter county were, after a few years, compelled to take up the fight, but it was up-hill work. *Their* neighbors, in turn, looked on with indifference, and no relief came, one small community could not overturn the mining industry from which came millions of money annually. Soon, however, Colusa and Yolo and Sacramento waked up to the matter and a more general fight began. Talk as we will about cold-blooded law, but it is a fact that all courts are swayed by the necessities and conditions of the people. Through speeches, conventions and newspapers the discussion became general all over the State. The farming communities of other portions of the State gave expression of sympathy for the farmers whose homes were being ruined. Their newspapers took up the fight. The newspapers of all Southern California circulated a supplement printed at this office. It was not until it became evident from all these expressions of opinion that hydraulic mining was no longer consistent with the physical conditions of the country and the necessities of the people, and the courts so declared the law. This declaration of the law could not have been had by any one man suffering at the hands of this great interest; it could not have been had at the demand of one small community.

Another interest springs up in another direction. A large portion of California is worthless without irrigation. People began to turn the water out of the streams, and orchards, vineyards, meadows, etc., covered the desert; towns, villages, cities sprung up on the industry thus created, until some hundreds of millions of property became dependent upon irrigation.

A few speculators at the *end* of some of the streams invoked the common law of England in order to get in a position to blackmail all this industry. These farmers who stood so nobly by the farmers of the Sacramento Valley, came to the Legislature asking for a law by which they might pay these "end men" a reasonable compensation for their so-called riparian rights, and use the water. The representatives of that portion of the slickens district most affected, with a single exception, have fought against the farmers who stood by them. The irrigators have been abused like pickpockets by the newspapers of the slickens district. The irrigators could have gotten every vote from the mining counties if they had accepted certain amendments which the anti-slickens people opposed; but great as was their interest, they refused. Now suppose the irrigation bills shall be defeated by the votes of the anti-slickens people? Will there not an antagonism grow up that will throw the irrigators and the miners together solid? We say aye! There will. When that comes there will be restraining dams authorized, and we who have made the anti-slickens fight will have only to thank the stupidity or the venality of our representatives in the Legislature of 1885.

Great as is the interest at stake in the slickens fight, it is nothing compared to the interests involved in irrigation, and it is only by keeping those people our friends that we can hope to prevent such things as restraining dams and other dangerous expedients. In all this the SUN will have a bright-showing record.

Irrigation Bill.

We notice by our exchanges that the bill passed the House with only 17 votes against it. This, to us, is gratifying intelligence, and means that it must become a law. The prosperity of Southern California is at stake, and to defeat the measure would turn civilization backward ten degrees. Take Los Angeles, San Bernardino and San Diego counties, besides many others, and their future prosperity depends upon their ability to use the water that is going to waste in their streams. Let members of the Senate do their duty, and if not another bill passes, the successful passage of this bill will make this a memorable session.

Tulare Register.

As It Now Stands.

One of the effects of the enforcement of the English common law of riparian rights (wrongs) is now being practically demonstrated on Tule river. The settlers on the plains south of the river, and between the railroad and the foothills, some years ago constructed what is known as the South Side Ditch for the purpose of watering their lands with the surplus water of the streams. After the right of these farmers to take water from the stream had obtained against the riparian owners, by virtue of the statutes of limitation, one of the riparian owners appeared in court and brought suit on behalf of minor heirs to restrain the South Side Ditch Company from taking any water whatever from Tule river. Our riparian Superior Court granted an injunction against the ditch company restraining them from turning any more water into their ditch. At present there is running to waste in Tule river not less than 200 cubic feet of water per second. The farmers on the South Side could, if they were only permitted to use the water now running to waste, wet up thousands of acres of land and insure crops where nothing at all will be raised unless the rain from heaven happens to come just right. Here we have the riparian doctrine in its true light—one man owning several hundred head of cattle sitting idly on the banks of the stream watching his stock graze, the river running bank full, “undiminished in quantity and unimpaired in quality,” while an hundred families on the plains above are forced by an unjust and barbarous law to quietly submit and see the life-giving flood flow past and onward to the lake. The amount of water now running to waste in Tule river would irrigate and insure crops up between 30,000 and 40,000 acres of land.

Now let us ask our recalcitrant Senators at Sacramento: Is it better for thy welfare and prosperity of our State that this one cattle king should enjoy a monopoly of the waters of this stream, only a small portion of which he can possibly use, to the extent of letting practically all the water run to waste, than the farmers above should be permitted to divert and use the surplus for the production of crops upon say 35,000 acres of land? If it is better for Tulare county, it is better for our State at large, for this one man to have exclusive control, in fact, order of courage to file a complaint

against a delinquent neighbor than to face the rattle of musketry or the roar of belching canons, and our modern reformers possess it not. Men will stand and be shot full of holes, have their limbs blown into the air and their flesh hacked from their bones without wincing, but attempt to injure their business and they will whimper like infants. The man who can look a dollar in the face and say, "I fear you not," will not tremble the day he meets his God.

San Francisco Alta.

The Will of the People.

There is more than one Senator among those who have identified themselves with the riparian side of the water conflict during this session of the Legislature, whose political ambition reaches beyond the narrow circle of his county constituency. Among them are men whose aspirations soar as high as the Chief Magistracy of the State. Others there are who have heretofore sought favor in the eyes of the people, and, although having failed to secure State recognition, have been lifted from private life into that political prominence which affords a generous opportunity to find the pathway which leads to the popular favor. The sooner these anti-irrigation Senators resign their aspirations, and conclude to return to the seclusion of private life, the less bitter will be their disappointment. As Senator Spencer of Napa conceded in his anti-irrigation speech the other day, the majority of the people are in favor of the proposed irrigation legislation. This state of the popular desire is but mildly stated. Applied to the people of Southern California it sounds ridiculously feeble. With all the energy and all the eagerness that a people can feel, who are prompted by the instinct of self-preservation, Southern California will fight for irrigation laws and against all who oppose them. The failure of the Legislature to give the State such laws will never be pardoned by those people. The refusal of a Senator to support their wishes in this matter will be treated as a demonstration of enmity to their welfare. It will be well for Senators to consider carefully whether the loud and unanimous demand of a great agricultural community for salutary laws for its common salvation may not possibly afford good ground for foregoing private judgment founded merely upon ignorance of the situation, or based solely upon thin, hair-splitting legal objections, invented by riparian attorneys. It will not be surprising, indeed it is almost certain that if the present feeling in Southern California continues, and it is more likely to strengthen than become weaker, the passion of the people will demonstrate itself by exercising a powerful influence in the nomination and election of the State judiciary. Of course this would be a source of regret. But when a people are being stung to death they care not where they strike nor whom they crush, so it be an enemy.

San Francisco Chronicle.

Irrigation and the Railroads.

It is now clear that the power which has thus far defeated the irrigation bills is the railroads. One of the most insidious measures of obstruction was the bill introduced by the railroad retainer, Whitney, and the whole policy of the railway Senators has been to prevent the passage of any Fresno bill until the Heath amendment had been passed. The monopoly was unwilling that Southern California should have water until its representatives had agreed to relieve the railroads from taxation. The irrigators' present hope is that, now that the monopoly has got all it wants, it will graciously permit the agricultural interests of the southern counties to be developed. These hopes may, perhaps, be fulfilled, though Shorb and other friends of irrigation are in low spirits over the prospect. If no irrigation laws are passed at this session, grave inconveniences will result, the progress of Southern California will be checked, and this will all be the doing of the monopoly.

An impatient reader complains that this incessant ding-donging against the monopoly has become monotonous. The monotony is not in the criticisms on the railroad. It is in its acts. There is no pleasure in harping incessantly on this one thing, when so many pleasanter topics are offered for treatment. But whichever way we turn, whatever reform the people seek in any direction, whatever new laws it is attempted to pass, we are invariably met by this far-reaching power, which frustrates our purposes and blockades our path. The Legislature cannot pass any bills except by the consent of the monopoly, and this consent cannot be begged, it must be bought. The railroad will not let mechanics' liens be adjusted, because the bill to adjust them was introduced by an independent member who is not in corporation pay. It will not let the dry plains of Southern California be supplied with water except on the condition that such men as Reeves of San Bernardino shall vote for relieving it of taxation. The tale reminds one of those Middle Age stories in which a man could only obtain permission to farm his own land on condition that he would agree that his feudal lord should be exempt from taxation. Monotonous, indeed! There never was a tyrant whose oppressions were not painfully monotonous to the oppressed, and our tyrant is no exception to the rule. Public censure should fall not on the journals which devote their columns day after day to exposing the progress of railway domination in this State, but on that much larger class of journals which witness the growth of this monstrous power with indifference, or abet it by a silence secured by corruption.

Record-Union.

Immigration and Irrigation—Letter from I. N. Hoag, Immigration Commissioner of California.

EDITORS RECORD-UNION:—I am glad to see there is a move on foot favoring the printing of books and pamphlets setting forth the many and great advantages offered by California to people seeking new homes and business—en-

couraging immigration. This is a move in the right direction. It will induce a fair and truthful presentation of the advantages of all sections of the State, and will place the expense of the same where it should be—on all sections to be benefited.

The more western Mississippi Valley States have adopted this plan and have been greatly benefited by the same in the way of an increase of taxable property and reduction of rates of taxation. They have also found it greatly to the advantage of the producing and general business interests of the country by the increase of the bulk of transportation and the consequent decrease in freight and passenger rates on the railroads. Another view of this subject may be presented for our State:

California has special interests, as the fruit, raisin and wine interests, to protect and foster which is required stronger and larger representation in our National Legislature. An increase in population can only give us the needed power and influence then.

But while the Legislature is inviting immigrants to cultivate the soil it should not neglect to enact such laws as will on the one hand protect the southern portion of the State from the threatened barrenness for want of authoratative regulations for the use of the waters of the streams and rivers in fertilizing the soil, and on the other hand protect the northern portion of the State from threatened destruction by the filling up of the rivers and covering their border lands with hydraulic mining debris. The discussion of these two subjects in our Legislature and by the press of the State has excited a lively interest here, especially among those who are studying our State with a view to making it their future homes, and the failure to settle these questions so as to inspire confidence in the continued prosperity of the whole State will more than counteract any efforts by the State to increase the population.

It is useless to spend money to induce people to buy and settle on lands that are worthless without irrigation, unless irrigation is made possible by legal authority.

It is also equally useless to invite people to buy and build homes on land where there is constant danger of destruction of those lands and homes and no legal authority for their protection.

The passage of any bill or law to authorize dams in the tributaries of our rivers would be construed here as well as there, as a license to the hydraulic mining industry to hold back and retard the settlement and improvement of all the valleys of northern and central California, and place the people and the property in the same in a constant and reasonable fear of total destruction,

I have special facilities for ascertaining and knowing the truth of both these propositions. Chicago is the rendezvous of the migratory portions of the fifty millions of people of the United States, and nearly all European immigration to America passes through Chicago. I am in constant contact with these people, and it is my business to answer all their questions about

California, the advantages and disadvantages of every section of the same. The constantly recurring question about any locality in Southern California is, What are the facilities for irrigation? In regard to northern and central California the equally frequent question is, as to its liability to injury from mining debris. If all these questions could be confidently and truthfully answered by assertions that good and efficient laws had been passed by our Legislature securing the benefits of irrigation, wherever there is water for the same in the south, and prohibiting the deposit of hydraulic mining debris in the rivers when it may endanger the lands and property in the valleys in the north, the tide of immigration to California within one year would be augmented at least fourfold.

If, however, the present Legislature should adjourn, leaving the irrigation question where the decision of our Courts have placed it, I cannot say much in favor of an increase or even of a continued immigration to that section. If the Legislature should adjourn without some legislation to prevent the filling of the rivers with hydraulic mining debris in the north; or if it should pass any act, the tendency of which would be to open up again the contest between the people in the valleys and the hydraulic miners, in the Courts, then all effort at inducing people to settle in that section might as well be abandoned. The State, under such circumstances, might as well keep her money in her treasury, and all immigration commissioners and agents might as well be called home.

The interest of the north and south in these questions are mutual, and there should be no hesitancy about settling both favorably to each section and the entire State.

It will not do for the Legislature to put the State in the position of encouraging people to settle on her lands while it refuses the necessary legislation to render these lands productive and secure from destruction.

Yours, truly,

I. N. HOAG.

CHICAGO, February 25th, 1885.

Alta California.

The order of the Secretary of the Interior in relation to the lands covered by Buena Vista and Kern Lakes, in Kern county, has excited a deal of just apprehension amongst the people of our irrigable districts, for it is a chock-block in the way of securing the local law reforms needed as the foundation of a comprehensive and useful system of irrigation, which will densely populate the great and collateral valleys tributary to San Francisco.

The Secretary has based his action, properly enough, upon such information as sought him out, and has left the purpose and inspiration of that information to be developed in the proceeding which he has ordered.

We do not propose here to make a showing of the law of the uses of water in California, as that law is fixed by the physical characteristics of this peculiar region. The civil law of the continent had its origin in natural circum-

stances, and if we trace it back to the Institutes of Justinian, we find it a perfect reproduction of the natural wants, rights and relations of men who lived on the rim of the tideless Mediterranean Sea, and therefore it would be inapplicable, for instance, to a question of tide lands that might arise on the bay of San Francisco when the tides ebb and flow.

The common law of England, in like manner, is a scientific reduction to a system of the rights, relations and natural wants of a people living on a moist island, where the sunshine is rare, fogs frequent, and over which the water of the sea is not infrequently carried by gales of wind.

The peculiarity of our form of government is, that it may be adapted to widely differing physical conditions, by leaving local concerns to local governments. Irrigation is a local concern in California. It was so recognized by Mexican law, which set up a special rule for California by specifically granting the waters of this province for the use of the people. That grant is the inheritance of the people of this State, secured by the treaty of Guadalupe Hidalgo as completely and as unimpaired as the same instrument secured the grants of land, for the water was more important than the land, which, without it, served only the uncertain and unprofitable purpose of stock-ranging.

The intention of the information upon which the Secretary has acted in regard to the lakes of Kern county is to nullify the jurisdiction of California over the waters of Kern river, and hence destroy entirely the State's jurisdiction over the whole question of irrigation, for what may be done to the Kern valley by the effect of a Federal meander of its lakes will be repeated on Lake Tulare, to destroy the orchards and vineyards of Fresno, impoverish the prosperous settlements of that county, and turn it back to the support of vagrant herds and flocks. Upon authority of the *Kern County Californian*, the editor of which, Mr. Hudnut, is as conscientious a gentleman as there is in the State, we learn that the lakes of Kern county, which are the key to the irrigation of that valley, are not such bodies of water as are pictured in the information upon which the Secretary has acted. They are at their best estate shallow sheets of water, endangering health on their reedy borders, and their efficient drainage would be a desirable sanitary measure, even if no other purpose were to be served. Frequently they have been entirely dry, parched as the plains on the zone above them. They receive the floodwaters of Kern river. If they are once established as bodies of navigable water, under Federal jurisdiction, the enemies of irrigation stretch the strong arms of the General Government along both banks of the stream that feeds them and along its permanent or temporary confluents, efficiently preventing the removal of a drop of water for the purpose of irrigation. If this is done let us tell the Secretary what will have been accomplished. The Kern valley and collaterals are capable of supporting, not only in comfort but in Christian luxury, a population of a half million people. The sun is never miserly in that region, it shines upon a soil affluent and generous, and ten acres of that land, with water to irrigate it, throws annually products

equal in value to the crops of a quarter section in Iowa or other interior States. With the land and water wedded, as they were in the law we inherit from Mexico, that valley becomes the modern instance of what Moses saw in the Promised Land, flowing with milk and honey and rich in corn and wine.

If the Secretary, who is pre-eminently a just man, can find, upon personal inspection of that region, any utility, present or prospective, gilded with results that approach in importance those easily attainable by irrigation, that may be reached by stretching a legal fiction over those ponds, we will confess our error and submit. He knows that we stand for the major utilities. Where there is a wilderness we want a trail; where the trail is we want a road, and where the road is we want a railway, and because we believe in making all natural forces incubate the highest usefulness we deprecate this sinister attempt to turn ponds and marshes into Federal waters, thereby defeating irrigation throughout the State, and denying to millions who would here find happy homes the health, wealth and pleasure which would be their right, and to other millions the fruits and food, necessary and luxurious, which these would produce.

Herein we have not drawn upon fancy for a single statement, for to us the whole question is as matter of fact as the price of beans, and every proposition we have put is as demonstrable as a simple problem in mathematics.

Kern County Gazette.

Organize Against Riparianism.

The Legislative Committee of the State Irrigation Convention is about to issue a call for a State Convention. The especial purpose of this Convention will be to organize for active and relentless warfare against riparianism, at the approaching election. The people of Southern California are now confronted with a danger sufficient to excite the greatest alarm. A majority of the Supreme Court have decided that the English doctrine of riparian rights is law in California. They have declared that water cannot be appropriated for irrigation. A State Legislature ready to execute the will of the people, has been throttled by combined and corrupt efforts of a small minority. We are an agricultural community. We are blessed with a soil whose fertility and productiveness seems incredible, almost marvelous to the stranger. We have a mild, equitable and salubrious climate. But we look to the skies in vain for water. The rainfall is so scanty, and the heat of the sun so intense, that our only recourse is to the rivers. We must irrigate to produce and to live. We must have the right to appropriate from the rivers, to irrigate. The right of appropriation is to us as sap to the tree. The traveler of our earlier days shunned the San Joaquin valley as the valley of death. Over its desert area lay scattered the bones of men and beasts thirsted and hungered to death. What has made it what it is now? How is it that the school house and the farm house now mark the grave of the famished wanderer? Whence

springs the grain, the fruit and the flowers, where once rotted the carcasses of starved cattle? From the appropriation of water from rivers, by virtue of the doctrine that prior appropriation for a useful purpose establishes a right. It is the purpose of the State Convention just about to be called, to secure unity of action in order to maintain that right by which we came into existence as a community, and by which we live. We want a Supreme Court which will protect that right. We want a Legislature which will properly secure and regulate the right to the use of water appropriated. We want a Governor who is absolutely sound on this question. To us the vital issue of the coming political campaign is, appropriation or riparianism. All other considerations are secondary. Our people must have it distinctly understood that no man, be his politics what they may, can be elected to an office high or low, who leans favorably towards riparianism. Let no man be supported who is not an outspoken and unqualified friend of and believer in the doctrine of appropriation. Make hostility to riparianism the price of a vote, from Supreme Judge down to Justice of the Peace, and from Governor to Supervisor. No half way policy can be sure of success. The riparian swamp land preservers and cattle kings are numerically few but powerful on their wealth, and politicians are said to have itching palms. The friends of irrigation should organize at once all over the State. Organized and united they can present a powerful front, and can control the election of such officers as have executive or official duties affecting this question. Not the least among the friends of irrigation should be numbered the merchants and manufacturers of San Francisco and Los Angeles. The sagacious man of business of a great commercial mart cannot fail to see at a glance the business advantage to be gained in developing the San Joaquin valley by irrigation. Instead of standing as spectators in our contest, the men of those cities will be represented in our Convention, and are expected to aid in organizing the fight, as well as in sharing the fruits of our certain success. Every irrigator and ditch owner in the State should attend or be represented in this Convention, as well as the business men of every city in the State. The baleful principle of riparianism must go to the wall.

Los Angeles Daily Herald.

The Herald proposes shortly to open the great irrigation question, which is one of the vital issues of our current State politics. One of our townsmen, Mr. J. de Barth Shorb, of San Marino, has been indefatigable in his raising of this issue. It is of vital significance in the development of Southern California. A single but momentous decision of the Supreme Court of California has resurrected the old riparian law of England and made it applicable to California. This was an unfortunate departure in the jurisprudence of this State which ought to be rectified by the Supreme Court itself, if the consciences of its members admit of such a modification, and which in any event ought to be met by the Legislature. In California, as in all lands where irri-

gation prevails, and in which the shallow volume of the waters of the streams have little relation either to navigation or to water power, the old Spanish adage of "El costambre del Pais" ought to prevail. There is no question but that the approaching campaign, in its legislative aspects, will turn largely upon the attitude of candidates upon this absorbing question. We shall recur frequently to it in subsequent issues of the Herald. We are pleased to see that the San Francisco press appreciate the gravity of the situation, and are standing in cordially with a development of the water rights of California which make irrigation the paramount consideration in the premises.

Modesto Herald.

Will not Down.

It seems that the large quantity of rain in this valley has not dampened the ardor of the friends of irrigation in Stanislaus county. The movement now on foot is on the original plan, and the new company proposes to make a success of it by tapping the Merced River. There has been new life infused into the project, and it seems to have a financial backing which will carry it through without begging for support and assistance from those who are not enthusiastic in the matter. The enterprise has taken a shape in a more permanent manner from the actual figures presented during the last summer effort on the part of the men who were engaged in the Tuolumne river enterprise, and something is due those men for the present endeavor. We understand that San Francisco capital has been enlisted, and that the work will actually begin in a few weeks. There is something in running water down hill, and the waters of the Merced will be easier handled on this account, but there will be a lack of volume when it is considered that the Crocker ditch taps the Merced far above the point to be tapped by the contemplated ditch on this side. The Crocker ditch has a capacity of fully half of the volume of the Merced, and at low water time there will be very little to spare for the Stanislaus ditch. We hope, however, that the new enterprise may be carried through and that it may prove successful. It shows that all are not blind to the best interests of the county, and that it will produce both population and wealth, which is always a valuable consideration in a community.

Alta California.

"The circulation of the *Alta California* is rapidly increasing, especially in the Southern part of the State. This is because it is in all respects a good journal, and, moreover, is wise enough to see the evil of riparianism and the vast benefits that would result to the State from a general and thorough system of irrigation. If it can impress its views on the business men of San Francisco, make them see that their interests will be greatly promoted by the advancement, growth and prosperity of the country, so that they will

use their influence to elect a respectable, honest and intelligent delegation from that city to the next legislature, it will have accomplished a work, the general benefit and importance of which will be beyond estimation." —*Bakersfield Californian*.

The *Alla* sees the whole future of California in this question of Irrigation. A State must remove all impediments which artificially restrain its progress. There are certain natural limitations everywhere which must be respected because they cannot be removed, but these are fewer in the path of California than of any State in the Union.

The natural conditions here are all favorable to a wonderful expansion, and the hindrances are, as a rule, artificial. The greatest of these is the doctrine of riparian rights, and application to the waters of the State of the policy of the dog in the manger, who could not eat the hay himself, but would not let the horse eat it. The waters are greatly more abundant than suffices for their needs. The surplus runs to the sea, which needs no irrigation, while the lands that thirst for it stay parched.

A law that places the ownership of water in this State in men who have no use for its abundant volume, is as inapplicable as would be a law denying the benefit of sunshine to all but a few. The few benefited would not use it all, and to deny the surplus to others would be an intolerable folly. We know that it is hard to impress the importance of this question upon our people, for the reason that it is a deal in futures. If the arid districts were already irrigated and populated and the assertion of riparian rights should suddenly stop the flow of their *zanjas*, there would be an outraged community, deprived of the very waters of life, and by its numbers commanding a hearing from the public men and legislators of the State. But the population now in those districts is sparse and scattered. The most charming oases in the world are planted here and there, where the water is still used in defiance of the obstructive riparian law. So it is that a plea has to be made in the interest of people to come, of homes that are to be.

When we strike down riparian rights we by the same blow end plantation farming in California, whether the large holdings be used for grain or stock ranging. The plantation farmers are often blamed for adhering to a system which robs the land and keeps out population, but is not wholly their fault. Small grain farming does not pay, and without irrigation small stock-raising is impossible, and the big ranchers have simply been putting the land to best present use that is possible. They own the land and somebody else owns the water, and they must get all they can out of the unirrigated soil.

The San Joaquin Valley is the counterpart, largely, of Spain in physical features and production, and will repeat the history of the development of Spanish vineyards when a denial of riparian rights terminates riparian wrongs. Formerly sheep ranged where now the choicest fruits of Spain are grown, and in parts of California to-day the finest citrus orchards and the best vineyards are on old sheep pastures. To pasture sheep and

cattle at a profit one man had to own or control thousands of acres, but when irrigation changed the production one man found twenty acres up to his capacity to till and care for, while forty put him amongst the rural princes.

The *Modesto Republican*, commenting upon our observations on the colony plan of settlement, says:

“It is not absolutely necessary to operate exclusively upon the colony plan, although it is the best way to settle up a community. But suppose some of our large ranchmen were to put ten or fifteen thousand acres of land on the market, cut up into ten and twenty acre lots, and let the people of the East know, it before our county would be thickly settled with a thrifty and prosperous people? Legislation, if properly applied, might help considerably, but if land is put on the market at a reasonable figure, there will be a demand for it, providing arrangements are made to get water to irrigate the crops when they need it.”

There is an element in the colony plan that makes it very desirable. It enables the practical transplanting of an entire Eastern neighborhood, made up of good folk who have grown up together in the exchange of neighborly kindnesses. In that way the Quakers of Ohio planted the Peedee, and Springdale settlements in Iowa, of which so many people retain pleasant recollections. By the same method the Dunkards of Pennsylvania took foothold in the same State. Those same Quakers are repeating the process in Southern California, and there is need of them on the raisin-producing plains of the San Joaquin.

We are glad to see the papers of the different counties speak up for what they think can be done in their own locality. The Scripture simile of the “New Jerusalem,” with its streets paved with noble minerals and precious stones, is the superlative, made necessary by the speckless streets of the capital of Israel, and they were kept clean by every man sweeping before his own door.

If the papers referred to will hold the people of their localities up to the high grade of this supreme issue, the net result will be a pressure that will finally control their salvation. The *Modesto Herald* closes its faithful testimony with this:

“The *Alta* is eminently correct so far as Stanislaus county is concerned, at least. No richer soil exists anywhere under the sun. The only trouble with it is, it has been too productive, and everything has been taken from it and nothing put back upon it, to give it the necessary strength to retain the moisture it receives during the rainy season, so as to impart it to the growing grain when it needs it most. There are plenty of men in this county who have made independent fortunes by raising wheat, but they cannot do it again unless they can get water on the land when they need it. This can be done when the contemplated canal is completed, which probably will be this summer. When that is completed and decent water rates are established, our growth in population and wealth will be marvelous, providing the large

land-owners will cut up their ranches into small farms and put them on the market, which is quite probable. Buyers will be plenty, and Stanislaus county's population will more than double within the next five years, if we will let the people know they can purchase homes, and that we want them to come and settle here."

San Francisco Daily Examiner.

Irrigation.

The most important subject for consideration by the next Legislature is that relating to irrigation. It is paramount to all other economic questions, and involves in an essential degree the prosperity and development of the agricultural resources of the State. It is not merely a question whether a proprietor shall have the right to water his lands from the flowing streams; whether the doctrine of riparian rights shall be infringed and the traditions of the common law set aside; whether a new law continuing all usages should be adopted, but whether millions upon millions of the most prolific fruitful lands in California shall be sacrificed to a feudal tyranny born in the middle ages and as applicable to American civilization as the old Norman trial by fire or battle.

The principle of riparian rights, as defined by the common law, applied to a country where the necessity for irrigation was unknown and unheard of. It can possibly have no application to a country where irrigation is a necessity. But conceding that the abstract question of right with the riparian proprietor, there is still another common law principle which goes with it, and is of equal force and pertinence, and that is, that "the interests of the few must yield to those of the many." This latter is superior to the riparian doctrine, because it lies at the root of all organized society.

Had there been desert lands in England that might have been rendered fruitful by irrigation, the doctrine of riparian rights, as we now have it, would never have been established. The doctrine was founded upon physical conditions of soil and climate that bear no relation whatever to those in California. There were no deserts to fructify; no arid wastes to redeem—and the question of irrigation could possibly have formed no consideration whatever in the judgments which settled the doctrine.

But there is still another aspect in which to view the question as it exists here in California; it is the well understood principle of jurisprudence that all laws, to be just, must be reasonable. No one will pretend that an unjust law should endure. If this be true, we ask, is it reasonable that all the water in California should be devoted to the use of a few riparian proprietors, while all the rest of the State is denied its benefits?

Fifty men are together traveling across a desert. By some chance one gets possessed of a barrel of water; the rest are destitute. Would it be reasonable for this man to hold this water exclusively for his own use, although more than he could consume, while his companions die of thirst? That is pre-

cisely the attitude occupied by the supporters of riparian rights in California. They rejoice in the possession of water which they cannot consume, yet hold for their exclusive use, while the rest of the State dies of thirst.

Aside, however, from the legal aspects of the subject, there are questions of public policy which enter into it. Let us consider, for example, this question of public policy in so far as it relates to San Francisco. We are outside the pale of the controversy, but we nevertheless have an absorbing interest in it. We have built up here a magnificent city of varied industries and innumerable classes of business. It is a vast mercantile community, which depends for its prosperity upon the progress and development of the country which geographically is tributary to it. Lying between the Sierras and the sea are vast areas of land containing the germs of prodigal wealth which need only the quickening agency of water to stir into prolific life. With this auxiliary agency the barren plains will bloom with harvests—the rich soil will yield wealth and beauty, which, poured into San Francisco through tributary streams of commerce, will help to build up on the shores of the Pacific a great commercial metropolis. The future of San Francisco is therefore inevitably linked with the prosperity and development of the State. If the State prospers and increases in wealth and population, so will San Francisco. If the State recedes—if her industries are contracted, if her wealth diminishes—San Francisco must inevitably decline. San Francisco is the heart to which the blood is sent from the extremities of the physical body and is redistributed, giving life and animation to the whole system. This life-giving essence is the commerce of the State. It is the restless agency which vitalizes everything.

That commerce is dependent upon production no one will deny. Neither will it be denied that production in California is dependent upon irrigation. San Francisco cannot be supported by a few riparian proprietors. It cannot see the rich lands of the State lie waste, without committing suicide. It is, in fact, as much interested in distributing the water of the streams for irrigating purposes as the farmers who demand it as the means of existence. All that San Francisco hopes to be—all that her merchants and tradesmen hope from wealth—all that her labor looks to for employment—depends upon augmenting the growth and productive capacity of the State—and the one essential thing to this consummation is irrigation.

Kern County Californian.

The circulation of the *Alta California* is rapidly increasing, especially in the southern part of the State. This is because it is in all respects a good journal, and moreover, is wise enough to see the evil of riparianism and the vast benefits that would result to the State from a general and thorough system of irrigation. If it can impress its views on the business men of San Francisco—make them see that their interests will be greatly promoted by the advancement, growth and prosperity of the country, so that they will use

their influence to elect a respectable, honest and intelligent delegation from that city to the next Legislature, it will have accomplished a work the general benefit and importance of which will be beyond estimation.

THE COMING CAMPAIGN.

We are upon the eve of a general election. All of the State officers three Judges, a Legislature and county officers are to be elected. The contest between the two political parties bids fair to be a close one. The difference in principles professed by each in this State is scarcely discernible. Any non-partisan question with powerful support and of public importance can command the balance of power by proper organization of its supporters. The Executive Committee of the Fresno Irrigation Convention have been summoned to meet, with a view of calling a State Irrigation Convention. It is expected that this convention will take a hand in the coming campaign. The advocates of a complete and unqualified assertion of the doctrine of appropriation of water believe its importance surpasses all party questions. They are ready to sacrifice political allegiance to any party, and fight any politician or aspirant for office to the finish who is weak-kneed on this question. They propose to beat any man to death at the polls who is on the fence. No candidate need talk about a fair compromise between riparianism and appropriation. The man who suggests it is against appropriation. A compromise means that "one side takes the turkey and the other the buzzard," *and the irrigators do not propose to take the buzzard!*

Alameda Encinal.

Irrigation.

We perceive that J. DeBarth Shorb, Chairman, has issued a call for a meeting of the State Irrigation Committee on Monday, April 5th, to consider the date and location of a State Convention, and take other preliminary steps for its meeting. This movement has begun none too early, in view of the magnitude of the interests to be considered. It is to be hoped that the grangers, and all who are interested in the matter will make a strenuous effort to secure proper action at the next session of the Legislature. No more important matter will come before that body, and, in view of the probable large increase of immigration this year the most decided action should be taken. The *San Francisco Chronicle* remarks very aptly that "it was made evident at the last meeting of the Legislature that something more than talk is necessary to secure the legislation required. The Fresno Convention did much to educate the people. It settled the question that the waterways, like the highways of the State, belong of right to the people, and that the old English law of riparian rights is not applicable to California. But when the appropriators went to Sacramento with their bill they had to contend against three classes of opponents—ignorant members, who did not understand the subject;

corrupt members, who wanted to be bought, and members interested in other bills which filled the calendar. It is now proposed to meet the Legislature of 1887 with a better equipped force." As our cotemporary further suggests, with great force, the people of the State, and particularly the citizens of the larger cities, should be impressed with the fact that their future prosperity, and indeed the welfare of the entire State "largely depends upon the establishment of the doctrine of appropriation as the law of the State—to the end that every drop of water in the streams which flow from the Sierra shall be made to do its duty. Our well being, our growth, depend on the development of our back country, upon the settlement of the lower Sacramento and San Joaquin valleys by small farmers who cultivate twenty, thirty, fifty or one hundred acres in diversified crops, and especially in grapes and fruit. These small farms cannot be cultivated without water, and the water cannot be had if the doctrine of riparian rights continues to prevail, and in the coming election not an office should be neglected; not a county overlooked. This fall no man should be nominated, or if nominated, should be elected, unless he is not only sound, but awake to the vital importance of the subject. The class of citizens who are interested in irrigation is large enough, if they combine, to defeat any candidate of whom they are not sure; and to be sure, they should endeavor to secure the nomination of men who are personally interested in the question, and so reliably safe that it would be unnecessary to demand pledges from them. If the Convention does its works thoroughly, appropriation will be the law of California by March, 1887.

Kern County Californian.

What Must Be.

It is evident that the irrigation interests of the State, represented by the State Irrigation Convention, will engage in the fight during the coming political campaign and the next session of the Legislature, with a spirit, vigor and determination that will totally eclipse all their previous efforts. They want the riparian doctrine, that fossilized precedent bound Judges are hesitating over totally expurgated from the laws of the State, if it is there at all, and they contend that it is not. Moreover, they must and will have a complete system of irrigation laws—placing the waters of the State under so just and thorough a system of control that the benefit may be extended to the widest possible limit, both as to individuals assisted and lands fertilized. If neither of the old parties think that irrigation deserves a place—the prominent place—in their platforms, the irrigationists will organize a party of their own, nominate State, Legislative and Judicial tickets and elect them. This time they will be early in the field, with their strength ten times renewed, and will put forth ever increasing efforts until victory is assured.

Oakland Times.**The Appropriators.**

One of the most important measures that was ever considered by our State Legislature will be brought before that body at its next session. California has reached a period in her history when we must begin to prepare for the largest immigration that ever flocked to any State in the Union. All eyes are upon us, and at present we are not in a condition to accommodate even a fraction of the people who will visit our shores during the next few years, for the purpose of making rural homes. We are not ready for a large population, for the reason that the large Upper Sacramento and San Joaquin valleys, comprising the richest lands in the world, are not artificially watered, on account of our State law, as it now stands. Our law on water ways was absorbed from the English Riparian Rights, viz: that water cannot be taken from any stream if a single person owning land on said stream objects to such a proceeding. This law might be applicable to England, but it most certainly does not fit the case in California, for a large proportion of our land in the above mentioned valleys is almost useless without irrigation. And why? Simply because at present it will take at least one thousand acres of the best land to support a family, and we know farmers in Stanislaus and Merced counties who have a mighty hard time of it to make both ends meet, even with farms of from one thousand to fifteen hundred acres. Now by taking a small portion of the water from the Toulumne, Stanislaus, Merced and San-Joaquin rivers, a country capable of supporting several millions of people, is at once thrown open to our Eastern friends, who are anxious to come here. "How can that be?" the thoughtless reader will ask. Simply because, under the irrigation system, a tract of from twenty to forty acres of land will support a family, and put a few hundred dollars in bank every year; whereas at present, one thousand acres will hardly keep the wolf from the door of the same family. "But that is guess work," some one will say. It is not guess work. We have facts and figures to prove what we say. The colonies of Fresno county are a living example of what irrigation will do for the San Joaquin valley. In 1876 the writer visited that county and was taken out to the first colony, by Tom Hughs, the projector of the scheme. The first ditch had just been completed and settlers were coming in slowly. They were not exactly discouraged, but they did not believe that they would be able to make a living on their little forty-acre farms. The whole country looked like a desert and land could be purchased for a few dollars an acre. Hughs was confident, however, of what irrigation would do for the county, and to-day one will find the same farmers, who looked blue in '76, and thousands of others, who could not be induced to take one hundred and fifty dollars an acre for their little ranches, for they have been able to make not only a comfortable living, but can boast of a large bank account and other property which would make them independent for the rest of life, without doing another lick of work. This is what irrigation has done for them, and proves what the rest of this large area of country would be if it were not for

the detestable riparian rights, which is the friend of no man except the man who owns large tracts of land along the watercourses, and wants to use it for stockraising only. For years these large cattle kings of Fresno, Kern, Tulare and Merced counties have been fighting the irrigators in the courts, and the people, seeing no chance for relief so long as riparian rights blocked the courts, decided to bring the matter before the Legislature. They called an appropriator's convention at Fresno, shortly before the last session of the Legislature, and prepared a bill, but the subject was new, to our Northern law-makers, at least, and nothing was done during the session. The appropriators learned a lesson, however; they found that the cattle kings were ready to meet them at every point and fight the measure with money and brains. They have not been idle, however, since the Legislature adjourned, but have strained every energy to make the people thoroughly acquainted with the situation, and we are firmly convinced that nine-tenths of the entire population now understand that without irrigation the largest and most fertile portion of California must remain almost tenantless; whereas if the riparian rights law is wiped off of our statute books, the San Joaquin valley will soon become the prosperous home of several millions of people, and as a natural consequence Oakland will be the distributing point. Therefore we cannot afford to send a single man to the next Legislature who is not a square up and up irrigation man.

Resources of California.

Riparian Rights.

The people of California are now entirely awake to the importance of irrigation, and the necessity for laws establishing and regulating the use of the waters of the natural streams of the State for that purpose is generally conceded. This sentiment is bound to find expression through the law-making powers which will result in defining the rights of irrigators and riparian claimants. This is a question in which the vital interests of our State are involved, for without irrigation an immense area of fertile and valuable land could never be cultivated, and would remain barren as the Desert of Sahara. We are in favor of the condemnation of the rights of all riparian owners under the old common law; an equitable compensation for such rights; and the establishment by legislation of the right to use the waters of the natural streams of this State for this purpose of irrigation, and such other regulations as will prevent the monopoly of water and the unjust taxation of those who make a lawful use of it.

Oakland Times.

We are glad to see that our contemporaries are beginning to study up the irrigation question. The whole thing is in a nut-shell. Are we to live by the old English riparian rights law, which holds that water is a part of the realty, and a man living above us has no right to take the water from the stream which

runs through our land than he has to absorb all the air about our premises, or shall we distribute this water equally over the land and give every man a chance to utilize what God has given him? The most of our streams are so abundantly fed from the mountains that there is no danger of a scarcity of water, and we know that there is a plenty for all; therefore we are in favor of the irrigators first, last and all the time. They must have water—and the sooner our legislature sees it in that light the better will it be for the whole State.

Visalia Weekly Delta.

Irrigation.

The question taking precedence of all others to be considered by the next Legislature, is that of irrigation. Time is being taken by the forelock this year. The committee appointed by the last State Convention to take charge of the matter, will meet in Fresno next week and arrange to have the matter brought before the people immediately. Conventions of the several political parties will be held soon, and in order to know how prospective candidates for the Legislature stand, and that the subject may be fully discussed before that body meets, it is necessary to commence work at once. A determined effort was made by those in favor of appropriating water for irrigation to have enacted laws that could settle this vexed question, and an opposition fully as determined on the part of the riparian proprietors succeeded in preventing legislation. The matter was not understood by people outside of the irrigating districts of the State, and the support of the city press and the non-irrigating counties was silent or lukewarm in its support, with a few notable exceptions. Now all is changed. Every county in this valley is heartily interested in irrigation, and among the latest to give the matter increased attention is our neighboring mountain county of Inyo, in which several irrigating canals are about to be constructed.

The large amount of literature concerning this subject which has been circulated throughout the State during the past two years, and the discussion in the San Francisco dailies recently, is having its effect, and people in counties where irrigation is unnecessary, are learning that they will not be injured in any way by allowing the southern and interior counties to divert water from the streams in order to make millions of acres of otherwise dry land habitable and productive. There is no reason why one person at the mouth of a river should be able to prevent hundreds and perhaps thousands of others from making a living, when they may do so by using a part of the waters that must, according to the common law of England, which a few judges persist in blindly following, be allowed to run to the sea undiminished in quantity and unimpaired in quality. There is no reason why the riparian owner and the appropriator should be at daggers' points. If one quarter of the money spent in litigation were expended in an endeavor to settle the matter fairly, it would be found that the supply of water is amply sufficient for

all. In Fresno county, the life-blood of which has been the water distributed through its network of irrigating canals; it is now necessary to drain land that was formerly a part of the "San Joaquin desert plains." The ground has become thoroughly saturated, and is drained into the sloughs that empty into the San Joaquin river. It is so also in those parts of Tulare county that have been irrigated for a number of years. The water that has been poured upon the dry lands of the valley are not lost, but are working their way in the sandy sub-strata to the lake, and as a small amount of the water at first used for irrigation is now necessary, a smaller quantity will be diverted from the natural channels to irrigate the same land, and that which is diverted will work its way back again. The supply is great enough for all riparian owners and appropriators, and the chances for the passage of the bills framed by the State Irrigation Convention, or others similar, are excellent.

Oakland Tribune.

The Irrigation Issue.

The next Republican State Convention will have to deal with a new issue which has not heretofore had political consideration. The irrigation interests, extending throughout the State, but mainly in the San Joaquin Valley and the southern counties, have gradually attained a magnitude hitherto unknown. They are organizing for effective work in the next campaign with the intention of forcing themselves into politics and demanding whatever their power will enable them to take in the way of measures for their protection.

In view of this fact it will be well to consider who they are, what are their claims, and why they venture into the domain of politics.

Irrigation is carried on all over the State, but the principal irrigating counties are San Bernardino, San Diego, Los Angeles, Kern, Tulare, Fresno, Merced, Stanislaus, and San Joaquin. Most of the land in these counties is of the character known as desert land, and is unfit for cultivation without irrigation. The population thrives by irrigation. Irrigation is carried on through canals, diverting water from the various streams. The right to use the water is secured by appropriation long sanctioned by usage and custom and by the courts, and embodied finally into the Code. So absolutely is irrigation dependent on the right of appropriation that in a legal sense the words are almost interchangeable. Without appropriation water cannot be had for irrigation.

There is an old common-law doctrine that the waters of a stream must flow within the banks without diversion, and under this doctrine the use of its water for irrigation or any other than stock or domestic purposes, is forbidden. But no one imagined that this law was or would ever become a rule of property in this State because it was inapplicable to our dry climate and meager rainfall.

A little over a year ago, however, three Judges of the Supreme Court held for appropriation, whilst the majority, four of the Judges, resurrected

the old English common law doctrine, holding that the water of a stream cannot be used for irrigation if any one owning land upon its banks says no.

At this, a common fear seized every one connected with irrigation, lest this should become the established rule of property in this State, to the utter destruction of irrigation.

They immediately appealed to the Legislature for some protection, but obtained nothing. Since then their alarm has increased almost to a panic. They are arming for a fight. Their just demands have been denied, and they are about to use their united power to take by political force that which they are refused.

These irrigating counties poll about thirty-three thousand votes. They are greatly exercised over this question. Irrigation is their bread and butter. Politics naturally sink out of sight with a people under such conditions. The Republican State Convention ought to recognize the justice of the irrigators' claims and take a stand for the right of appropriation if it would secure the lion's share of this vote. Alameda county ought to send a delegation to the Convention who are properly impressed with the importance of developing the interior by irrigation. A flourishing country builds up a populous city.

Kern County Californian.

The Irrigation Question.

Says the *Record-Union*: "The irrigation question is coming to the front as one of the most important topics to command public attention in the coming campaign, and the subsequent legislative session. We adhere to our doctrine that a true policy is for the State to convert mountain canyons into storage basins, where practicable, and save for irrigating uses the waste waters of winters, and those from the melting snows of early summer. On the basis of a storage system the irrigation problem can be greatly simplified."

The irrigation problem could be still further simplified on the basis of eradicating all traces of the alleged English common law of riparian rights. Moreover a storage system cannot be established unless this is first done. Dams, for reservoirs, must be built either on the streams themselves or their tributaries, and this the *end men* would object to. They claim, under the common law of England, which they allege is in force in this State, all the water that flows in the streams, at all seasons of the year, in flood time and drouth, and they would object to impounding any portion of those waters if it were for the purpose of keeping up the supply for diversion and not to flow down to them. Every mountain canyon down which water flows in time of rain or snow melting is the tributary of some stream. Before capital will engage in reservoir building they must be assured of immunity from the obstructionists referred to who have made so much trouble. For the present, with the ban of riparianism removed, there is water enough in the streams for all purposes. Let it be used and the means would accumulate, now wanting, to build a storage system when needed.

Tulare Register.

"We are informed by one of our merchants who has just spent a week or more in San Francisco, that the merchants in that city are really taking quite an interest in irrigation matters. They make earnest inquiries in regard to irrigation and begin to realize that their own prosperity as well as ours depends upon a just solution of this problem. This question is new to the business men of San Francisco and they hardly feel able to grapple with it themselves, and look to the sections immediately interested for a solution of the problem. This is as it should be. We, of the Valley, are capable of evolving such a system as the State needs. We have been brought face to face with irrigation, and experience has taught us what we want. But it is not enough to know what is needed. We must have the thing needed, and want assistance in procuring it, and therein our city friends can help us materially. In fact, it is going to be well nigh impossible for us to obtain what we need without the assistance of San Francisco. That the assistance may not be rendered by their electing men to the Legislature who know all about the question and are themselves capable of drafting such bills as are needed; but if they are so disposed they can haul off their coats and go into the next campaign and send from San Francisco a delegation of honest, capable men, whose judgment will be more influenced by argument than by money. It is the man who needs to be 'seen' before being convinced whom we most fear."

San Francisco Chronicle.

The Irrigationists.

The irrigationists have gone to work the right way. They propose to organize in every precinct in their portion of the State, and see to it that they are duly represented in the county conventions. The measures which their interest and the interest of the whole State demand would have become laws in 1885 but for the factious opposition of a small knot of politicians whose purposes were well known. The names of these men are no secret; they will be found recorded in the journals of the Senate and Assembly; they were published over and over again in the correspondence and editorials in this paper. Several of these men will want a renomination; then will come the time for the irrigationists to get in their work. No man who was faithless to the cause of irrigation last winter should have an opportunity of visiting Sacramento again as a public servant.

If the convention which meets here on May 20th maps out its work with care, it can secure a solid body of members from the central and southern counties pledged to irrigation first, last and all the time. No party convention will dare to nominate a man who is shown to have destroyed the cause in 1885; if it does, the duty of the people is clear; they should support his opponent. Irrigation is the one all-important question for the southern counties. In choosing new men, conventions should require them to give pledges.

that they will make irrigation their first concern; that they will not allow the bills framed by the committee to be delayed or set aside by other measures; that they will stand by them, in season and out of season, till they become laws. If the irrigationists tackle their work in this spirit, they cannot help but succeed.

The Daily San Diegan.

Irrigation.

The English doctrine of riparian rights that has been judicially decided by the highest court of resort in this State to be the law in California, will not be accepted by the agricultural interests of this State as a final settlement of the principle involved in the matter of irrigation. This decision practically destroys not only one of the most valuable industries, but strikes a fatal blow at the future prosperity of the State. In many counties the right to irrigate by diverting and appropriating water from the natural water ways of the State is all that gives value to a locality, or invests it with conditions essential to human life.

Daily Examiner.

Irrigation.

We surrender an unusual amount of space this morning to the address of the Executive Committee of the State Irrigation Convention. The overwhelming importance of the question, however, fully justifies us in doing so. No more important subject ever came before the people of California. It lies at the root of all our prosperity and material development and advancement. It is neither sectional nor personal, but universal. It pervades the State from end to end. It includes all classes of population, and overshadows in magnitude and importance every other issue.

It does all this because without irrigation, provided for by law and put beyond the domain of question or dispute, California must stop in its career of marvelous progress if, indeed, it does not have to return to the barren conditions from which a part of the State has been rescued by tireless energy and enterprise.

The address we print this morning covers the whole ground in controversy, and graphic as is the statement the Executive Committee submits, it is neither too highly colored nor overdrawn. The question is one of progress against decay; of the possibilities of a splendid future, in which the highest degrees of enlightened and material development and the most profitable and productive cultivation of the soil contrast with the desolation of utter barrenness.

The proposition that the soil of nine-tenths of the State cannot be cultivated without irrigation is too obvious for controversy, and that there is water enough in the streams which can be rendered available for this purpose is also beyond dispute. That every commercial, agricultural and busi-

ness interest that we have already, or may have in the future, is dependent upon the lawful diversion of the water from the streams is also obvious.

The question is, Shall the legislative assistance needed be given? The people have it in their power to accomplish this great necessity. They are the source of power, the tribunal from which there is no appeal. But, to render their efforts intelligent and effective, they must have a specific organization and definite ends. These are provided for in the address, and the plan proposed should command the very widest possible attention and the thoughtful consideration of every man in the State. Every one is interested in the subject. The citizen of the city, equally with the citizen of the country, will find in this question the hinge upon which the future of California will turn. It embraces every vital interest, every hope and prospect of the future, and the appeal which has been made addresses itself to the patriotism of the individual and the sense of right of the public.

Pacific Rural Press.

The Irrigation Movement.

On next Monday, April 5th, the executive committee of the Irrigation Association will meet in Fresno to fix upon a time and place for holding the State Irrigation Convention. The idea is to hold a general assembly for several days for the purpose of thorough discussion and action upon the matters affecting the interests of those who grow products by irrigation water. Much of the future growth and prosperity of the State depends upon the correct solution of problems connected with irrigation. It is important that measures should be undertaken to secure a better understanding of these matters. It is necessary that the coming Legislature should act upon the subject and enact laws which shall meet the needs of the people and the growth of the State. The subjects were brought before the last Legislature and a strong effort made to secure legislation, but without effect. Much of the difficulty laid in the ignorance of many of the legislators whose lives have been cast beside city walks rather than beside running streams. By beginning early this year it is hoped that men can be elected who have clear ideas upon the subject and can be trusted to legislate intelligently. It seems to us that most good can be done by a convention in San Francisco, because here are the most people who need a little hydroculture, and here, too, can be reached the greater number of those who have influence in legislation. People living in irrigated districts do not need instruction in their progress and their needs.

We are pleased to note indications that there is a better understanding of the points at issue in the newspapers of the State and the need of legislation, which shall settle the conflict between laws and precedents and conditions, and give us a plain course for the development of our arid areas. Much will depend upon the selection which shall be made this fall for State officers and legislators, and there seems to be a disposition to make soundness on the water question a qualification for support by those in that interest. We do

not object to judging a man rather by his industrial value and wisdom than by his political affiliations. There are many ways by which men who are ready to work for the advantage of the greatest numbers can make themselves useful in the coming Legislature. If both parties will bear these facts in mind, they may both give us nominations which will be acceptable, but if either candidate should be in doubt whether he should serve the few or the many, the party which names him will have a heavy load to carry. The floating vote promises to increase from year to year in our elections, and the balance of power is already clearly in its wake. We trust the committee next **M**onday at Fresno will issue a ringing address and make wise arrangements for coming popular meetings.

Fresno Daily Evening Expositor.

On the Right Track.

The San Francisco *Alla* is on the right track. It espoused the irrigation cause something more than a year ago, and has been consistently at work ever since trying to interest the business men at the Bay City, and the people generally, in the cause of irrigation. It sees that irrigation will build up and fill with people the great valleys of the State, and that by so doing the business interests of San Francisco will be built up and an era of prosperity inaugurated. Speaking of irrigation, in a late issue, it says:

"We want more people in California; we want more production, more school houses, churches, Sunday schools, houses, homes, and the greatness they join hands in bringing. We know that on the plains which can be irrigated when the doctrine of riparian rights is discarded, there will spring up palm-shaded homes in the midst of vineyards and orchards, where there is no Winter, and where the settler need not even pray for rain, for he will control the time and quantity of water that shall go upon his land, and his prayers may go for other spiritual or temporal blessings of which men are always in need.

"The irrigable districts, when so settled and tilled, will produce articles that are staple the world over, and are nowhere produced as well. The Illinois farmer who has dodged the frosts and showers to get in his corn, has mashed nasty cut-worms with his fingers, poisoned squirrels and frightened crows away, has run through the rows with a cultivator and laid the crop by in July, with the temperature at 100° and the leaves sawing across his sweaty neck, who went out in the chill and stormy nights of early September and figured up the interest on his mortgage while he figured on the chances of frost that would destroy the season's work—that is the man who will live forever when he is transplanted to the Sacramento or San Joaquin valley, with water to irrigate his land. He will prune his trees and vines, pick his fruits and dry his raisins, and make more clear money off twenty acres than he ever did off a quarter section in the Sucker State."

It is to be hoped that the *Alla* will be able to cram its good ideas in this direction into the heads of the San Francisco business public, so that they

may aid, this year and in future, in driving the California Legislature into passing laws on the subject of irrigation which will enable districts to construct canals, regulate the flow and distribution of water, and stop the everlasting lawsuits of the so-called riparian claimants.

San Francisco Daily Examiner.
Irrigation and the Common Law.

The common-law doctrine of riparian rights was the outgrowth of peculiar conditions. It is not a universal doctrine. It was fitted to circumstances, just as irrigation is applied to conditions the reverse of those which sanctioned the riparian doctrine.

The common law of England is the creature of custom. Custom made the law. It arose from long-established usages. In the early days of British civilization the streams were used for navigation, to turn mills and for fishing. The conditions of the climate rendered irrigation an unknown factor in agriculture. Water was diverted from the streams only for domestic and mechanical uses, and in the latter contingency, statute, supplementing the law of custom, required its return to the original channel after fulfilling the mechanical functions for which it was diverted. But the fact, that under any circumstances it could be taken from the stream, shows that the common law doctrine of riparian rights, even in England, was not inflexible and absolute.

The smaller streams were useful only, as we have said, as repositories for fish, to turn mills located on their banks and to supply cattle in the field with drink. When diverted to supply fountains or to turn inland machinery, a general statute, in the reign of Edward the Confessor, directed its return by an artificial channel to its native stream, "so that the volume shall not be diminished, except in so far as it is lost by unavoidable means." This statute in itself demonstrates that the rule of the common law, which confined water to its original channel, was not inflexible. On the contrary, as the law was the outgrowth of custom, so custom modified its provisions and diversified the uses to which water might be applied. The common law being the outgrowth of custom, and custom being the creature of usage, the doctrine of riparian rights was established simply in the absence of antagonistic interests. Had there been a statute it would have usurped the domain of custom and the uses of water would have been defined upon a basis that would have excluded the doctrine of riparian rights.

It must be also understood that the common law is a collection of customs in so far only as the customs can be established and proved to exist. The riparian interest is an established custom in England, and so becomes a part of the common law of that country. But it does not follow that a directly contrary custom would not be equally sound as a common-law right if founded on established usage—the diversion of water, for example, for a particular purpose. In fact, the legitimate application of the common-law doctrine of

custom would make priority of right by priority of appropriation of water for specific uses, such as the irrigation of land, an absolute right under the common law. Riparian rights are simply customs. They were the usages of the country. They are therefore recognized by the common law, not because of any intrinsic merit in the doctrine, but solely for the reason that they were a recognized custom. If, then, it be the custom and not the principle that gives vitality to the doctrine, the custom of using water from the streams for irrigating purposes, as in California, overturns the obsolete riparian claim and invests with the common-law sanction the custom made lawful by priority of appropriation.

The fault in our courts has been this: They have mistaken the spirit of the common law. There are no recognized principles in common law. It is made up of customs. Use is custom. Therefore, when the farmers of California diverted water from the streams for artificial irrigation, and no effectual opposition was made to it, *it became a custom and part of the common law*. Custom must precede the law of recognition. With the growth of the custom of diversion for irrigation purposes the riparian doctrine became obsolete as effectually as if this use had been proclaimed by statute.

Irrigation, then, is a custom established in California, and by all legitimate rules of legal interpretation is a part of the common law of the land. Because the Courts have refused to recognize it, it becomes necessary for the Legislature to pass upon it—not to create a new right, but to confirm an old one.

Stockton Evening Mail.

Let Us Irrigate,

The San Francisco *Alta* has performed a valuable service to the whole State by taking the lead in the advocacy of irrigation, and maintaining the position with its accustomed vigor.

This should be considered the question of all questions affecting the vital interests of California, with the exception of that of the expulsion of the Chinese. Our State is not at present, take it all in all, developed up to more than one-quarter of its possible productiveness. Nothing would develop it so rapidly, so completely and so permanently as irrigation. It is sufficient for present purposes to consider only the region contiguous to Stockton. Stockton ought to have a population equal in numbers to the present population of the city and county, and the county outside of the city should be sustaining to-day in active agricultural, viticultural and horticultural industries fully thirty thousand people, instead of its present fifteen thousand, or less. Nobody questions the ultimate possibilities [of soil and climate. Old citizens and recent acquisitions, pioneers and tenderfeet, are all agreed that this will be a region of great productiveness some day.

The only question then is, how and when is the change to be brought about. As to the how, it is plain that the only thing needful to make this portion of

the valley blossom like a rose the year round is water. Water, water, everywhere, nor any drop for the famishing vegetable life seen everywhere during the summer months, is what impresses all first observers. The rivers all run wastefully to the sea, while the plains onto which they might easily be diverted are parched and forbidding.

There are three sources from which this portion of the valley might be abundantly watered during the entire dry season. One is the Stanislaus river, on the south, another is the Mokelumne, on the north, and the third is the Salt Spring valley reservoir, between the two. It has been estimated that for \$150,000 the Stanislaus river could be made to irrigate 30,000 acres of land. The increase in the value of the land resulting from irrigation would more than double the cost of the canal and lateral ditches. This will be done some day, and the Mokelumne will also be made to serve the farmer and the orchardist. What a change will be on the face of nature hereabout then. This county can produce anything that is grown in the State, if only the plants and trees are watered.

Why then let the rivers mock the plains and the soil withhold its most precious bounties? The old riparian law might have been good enough for England, but it is no more applicable to California than a law would be forbidding the navigation of our rivers by any sort of craft but those propelled by sail.

Daily Alta California.

The Executive Committee of the State Irrigation Convention met yesterday at Fresno, and promulgated an address which will be found elsewhere in our columns. It is a narrative of things past and a noble prophesy of things to come. In its antitheses may be read the certain future of California. If our laws are brought into harmony with our physical conditions and natural necessities, this State at once opens her acres to the densest and most prosperous population in the world. If our laws remain at right angles to those conditions and necessities, the desert now untouched remains bald and barren, and invades the green oases which are now supporting a prosperous people.

California is more talked and thought about in the East now than when she shot into notice and notoriety upon the discovery of gold, for there are more people to talk and think.

A land that produces the orange, grape, olive, almond and fig, appeals now as powerfully to the fancy as did the production of gold thirty years ago. The agricultural and horticultural possibilities of a winterless country, where the palm waves its branches and the magnolia blooms the year through, lure and allure and conjure with greater power than the promise of gold to be dug from the hills. It opens up the prospect of a redistribution of population. It promises a useful drain for the benefit of the older States, that leaves within them better opportunities for all who stay, while there is no rule by which

to measure the certainties offered to all who come blessed with a willing spirit and ready for the light toil which wins a competency.

Now is California's more than golden moment. It is not worth while to dally over details. Let the work outlined by this committee go forward to success, and the processes for utilizing water and storing it for irrigation will unfold and keep pace with our necessities.

Bleak New England impounds the flood water of her rivers to make power for the mills. On the heads of the Mississippi the same process stores the spring floods, to be released from dams in the dry summer to make the stream navigable. In its first stage the ordinary flow of our rivers will be tapped for irrigation, and as we get on the cañons will be dammed, and finally every pearly drop of water in our State will be transmuted into grain or grass, it will sparkle in the wine bottle, it will tempt the palate in the juices of fruits, it will shine in the nutty-flavored oil. Transfiguring the desert, this water will smile in the tints of the rose and in the verdure of the palm.

One wonders that we have delayed so long in making this a foremost issue and crowding it to a settlement. Southern California has shown what can be done, the crops that can be raised, the colonies that can be settled by irrigation. Spain long ago taught the world the value of irrigated lands. There those lands sell at \$600 to \$1,000 per acre, and irrigated lands rent annually for a sum per acre equal to the selling price of lands that are without water. There is nothing that those Spanish lands produce that cannot be grown in equal excellence here. It was instinct that led the Spanish race to settle along this Coast. Here, as at home, they began with flocks and herds, and we succeed them to take the next step and force the soil to its noblest production.

The committee's address draws a faithful picture for the benefit of San Francisco. It points out to the business men of this city the way to a future that must command their interested sympathy. We have enough city population now and to spare. We want rural recruits. We want the local backing of five or six millions of people, and the coming five or six years can bring them, if we offer the rural certainties that lie in irrigation. Look at Dakota, Nebraska, Iowa, jumping forward in population at the rate of 100 to 400 per cent. every decade! Yet the hospitality they offer is as the handshake of a cold-blooded frog to the hot-palmed grasp of two lovers, compared to what California can afford as an attraction to immigrants and an inducement of their stay.

We need not necessarily rake Europe to find population. Our American people have shown in Southern California a remarkable adaptation to the conditions of profitable ownership and pleasant life on these irrigated lands. If there is any situation to which an American is unsuited it must be in the next world, for it is yet undiscovered in this. We like to see them come and get the benefit of ownership in the choice and Eden-like spots in their own country.

The committee puts upon this city the compulsion of considering this question now and taking her part in its solution. The convention meets.

here. It will not only deliberate in the presence of our people, but they will be expected to be something more than idle auditors. Our merchants and bankers and manufacturers will be called to council with the country folk. They will be asked to affirm their faith in irrigation by their works, and if they have no faith they must stand up and tell why they have not. The best thing in this movement is its conjunction of city and State interests. This campaign is to be a severe case of confluent enthusiasm. It is an issue which elevates politics and brings into the primary movements of parties the best class of people. Readers of Bret Harte's "Luck of Roaring Camp" remember how from the cradle of the motherless baby went out a softening influence that refined even the speech of the roughest men. So this question of useful appropriation of the waters will refine our politics, for in it is all that relates to hearthstone and roof tree, to the founding of homes and the strengthening of every institution of civilization.

When the convention comes let it be welcomed by our commercial and financial bodies, and let its best purposes be strengthened by the active sympathy of every man who has a conception of the laws by which commonwealths grow. When it declares its plans let them be the legend upon the banners of parties, for in that sign we are to conquer the glorious future of the greatest of all the States.

Oakland Evening Tribune.

Irrigation to the Front.

The address of the State Irrigation Committee, published in another column, is food for political digestion. There is no announcement of the formation of an independent political party, but there is an intensity of purpose pervading the address foreshadowing a distinct political organization in the not distant future.

Republican party leaders had best give the subject serious consideration. Here is an organized movement of a whole community to be met in the field of politics. Will the Republican party give it the cold shoulder, or will it take up the cause of irrigation, and gain the gratitude and the votes of the irrigators? The Committee says: "We must now make our force effective in the politics of the State, since in politics the Legislature to which we appeal is generated. We must demonstrate the fact that there are political triumphs greater than the conquest of spoils, and this is to be done by going unitedly into politics to stay until our rights are secured."

The Republican party has ever been the friend of progress. Under the wise and beneficent policy of the party for twenty-four years the internal improvement of the country by the settlement of the public lands has been without parallel in the history of nations. As a part of this policy a Republican Congress passed the Act of 1866, which the National Supreme Court has held to be recognition of the doctrine of appropriation of water, setting the seal of disapproval upon the uncongenial and inapplicable riparian theory, in the

Pacific States and Territories. This policy has reared civilization in a desert waste of country. All the irrigators ask is that this policy of the past be written into the ineffaceable law of the land.

The Republican party cannot hesitate to perpetuate the system of development framed and perfected by the statesmen whose glory was born of the troublous times of civil strife and whose names live in every heart.

The party cannot afford to repudiate the right of appropriation and take back what was freely and generously given as the reward of energy, enterprise and industry.

Colusa Sun.

The Irrigation Bills.

A correspondent, who is, by the way, a friend of irrigation measures, informs us that some of the friends of some of the members of the last State Legislature, who saw fit to oppose *all* for the furthering of irrigation projects in the State, are asserting that the Fresno Committee's bills proposed to take all the water away from the man at the mouth, or lower end of a stream, without compensation; that it proposed to make arbitrary districts, and tax all land within the boundary, whether it could be irrigated or not. There were other stated misrepresentations to the bills proposed, but these are the chief, and afford us an opportunity of explaining the scope of the "District" bill, the most important bill presented, and about the only one in which the people of the Sacramento Valley are interested.

To form a district, a certain number of land owners must petition the Board of Supervisors of the county in which the largest amount of land is situated, setting out boundaries, etc. The Board must then fix a day for the hearing, and give proper notice. At the date of hearing, the Board is authorized to take testimony, and to include land on the outside that may be irrigated by the proposed work, or leave out all land that is shown cannot be irrigated, although the same might be in the center of a district. Towns are thus left out. After the district has thus been formed, it requires the *written consent of two-thirds of the land owners, owning two-thirds of the land*, to confirm the district. It will be seen that this arrangement protects the small owners against the large ones, and the large ones against small ones. After the district has been formed, and Trustees elected by the people, it can go on with ordinary work, but if it shall become necessary to go in debt and issue bonds, it must again have the consent of the two-thirds, as above set out.

The bill proposed to condemn and *pay for* everything that stood in the way of the accomplishment of these ends. If every man on a stream below a proposed canal had a right to fix the price of his own damage, or to refuse to allow any water taken out, according to his whim, it is very evident that there would never be any irrigation.

The gentlemen, who, at the dictation of a few cattle kings, threw themselves across the path of California's progress, shall never escape the responsibility of that act while we have the power to draw pen across paper. It is not a

question of a difference of opinion. The men who acted in the Senate as the attorneys for those who would rather see thousands of square miles of California's most fertile lands—with water—a vast cattle ranch, feeding one cow to forty acres, than see it covered with vineyards and orange groves and orchards and grass plots, supporting and making rich and happy a family on each forty acres, admitted that it was a great question, admitted that legislation was necessary, but they stubbornly fought against time to keep the bills from reaching a position where they could be even amended. They fought not like Senators, but like attorneys; they fought to keep the bills from being considered. It is no part of a Senator's duty to stammer and repeat, and read long extracts, and look back at the clock, and remark how slowly it moves, in order to keep a measure, he admits to be of vital interest to the State, from being considered.

We are willing to stand by those Fresno bills, and believe we can defend them against all the world, especially in the District bill, which is of more direct interest to this section of the State, and we shall be pleased to explain to any one the provisions of the bills. We must put this country in a condition where we will not be dependent on a single crop. We must fix it so that it can be depended upon for a crop each year of cereals, of grass, of fruit, or anything the farmer may think at the time will be profitable.

Stockton Daily Independent.

The Irrigators.

In Fresno, on Monday, the Executive Committee of the State Irrigation Convention signed an address to the people in behalf of the movement they represent. The address recites that the committee framed bills to be acted on by the last legislature, and intended to place irrigation among the permanent policies of the State.

The irrigationists received vigorous support from many newspapers, and worked hard to obtain the aid of legislators.

The few riparian owners who oppose the use of water for irrigation, controlling a small minority in the house, filibustered to hinder there the passage of our bills.

The committee advises properly that the votes of irrigators be withheld from these filibusters when they appear again as candidates for office, advice which, if followed, will result disastrously to the ambitions of this county's Democratic representatives in the last senate. Attention is called to instructive figures showing the comparative settlement of Eastern and California valleys. Although thousands of acres of desert lands have been reclaimed and made to yield an export product, the total acreage so redeemed is insignificant beside that remaining in its virgin poverty.

With the same density of population as the basin of the St. Lawrence the Sacramento and San Joaquin valleys would contain 1,856,000 souls; and increasing until the valley of the Delaware rate were reached, the population

would be 10,208,000, or near ten millions more people than are here now. That such a number of people shall be brought into these two magnificent valleys; that their energies shall be given to cultivation of the soil, home building and trade building; that they shall invest in the valleys ten times as many millions of dollars as their own numbers aggregate, contributing their purchasing wealth to Stockton and other cities located conveniently where nature has afforded superior facilities for manufacture and commerce, and adding to the State's single metropolis of San Francisco half a dozen interior cities of metropolitan importance; that this shall come about with the time of one man's life, may seem a wild dream, but it is no less possible than the building of San Francisco in as little time, or the greater advancement, during an equal period, of the great cities and some of the valleys of the East. But it cannot be done without irrigation.

Only with irrigation can crops be raised on much of this bare land in the valley areas, because of the dry atmosphere and light and fickle rainfalls, but with irrigation the desert "may be made to blossom like a rose."

Since the last session of the Legislature the irrigators have gained strength. There has grown in their favor an intelligent and firmly established sentiment that the bounty of nature should be used in the two great valleys of this great State to bring the greatest good to the greatest number, and that, though the law may now protect riparian ownership and the barrenness of the desert, it should be made to declare for an irrigation policy, enabling the cultivation on this now arid soil, of the generous crops water will assure, and the displacement of desert dreariness by the cheerfulness and prosperity of an industrious and a loyal people who shall be to the State an additional element of wealth and strength.

The further settlement and development of the San Joaquin valley must repound to the commercial growth of Stockton, and irrigation measures for San Joaquin county itself could be pursued to decided advantage.

Sacramento Record-Union.

The vast importance of the irrigation question in California can scarcely be over-estimated. It is taking form now for new presentation to the next Legislature, when it is to be hoped that it will receive more careful, dispassionate and statesman-like consideration than it met with in 1884. It ought not be entangled with slickens, politics, ambition and strife for place. It must, if well considered and justly determined, be adjudged upon its own merits and free from any other influences. We have already expressed our opinion as to the duty of the State. It has duties in the premises, and, aside from the determination of the issues between riparianists and appropriators, the least of these is to provide a storage system for the surplus waters of winter, and the retention for use of the melting snows of the higher altitudes.

Kern County Gazette.

The advent of another political campaign, involving issues segregated from questions of national interest, brings into prominence matters concerning the State as a distinct community. We have already had occasion to advert to the surpassing importance of the irrigation problem. Neither business men nor politicians can afford to ignore it. The water question is forcing itself to the topmost of all questions of the day. We have long since endeavored to make it evident to business men that we must populate and develop the interior if we would create a wealthy commercial centre here. The southern half of the State, composed largely of desert lands, is being rapidly settled and improved by increasing irrigation. The existing controversy as to whether the riparian law or the law of appropriation is to be the law of the land involves either the discontinuance or perpetuation of irrigation. That the law of appropriation ought to have been adopted originally both for mining and agricultural purposes, no intelligent person will question. Whether it was adopted, is for the Court to decide. Whether it will be the law of the future will be for the people to decide. Whatever may have been the intention of our first law makers, and whatever may have been in the minds of our earlier judges, as to the operation of the common law upon our water system, it is, nevertheless, true that not only farmers, but lawyers, and even eminent judges, have from the very earliest time, believed that the first in time was in right, and that the ownership of the bank gave no right to water, without actual appropriation and use. Acting upon this belief, whether right or wrong, thousands and tens of thousands have settled in the State, and are to-day depending for food, shelter and raiment upon water rights supposed to have been acquired by appropriation. This state of affairs has grown out of the irresistible necessities of the people, and the condition of the country. Not a yard of ditch would ever have been constructed, not of drop of water would ever have been diverted if it could have been avoided. With the growth of population, the necessity grows. Each day adds to its force. To the necessities of a whole people everything must yield. A nation has never existed which has not by revolution, either peaceful or otherwise, destroyed whatever impediments to its necessary growth may have crept into its body of law. In this country of popular elections the peaceful methods of righting public wrongs are through the legislatures and the courts. With a judiciary nearly evenly divided as to laws of water rights, each side pursuing a separate process of reasoning in arriving at its conclusion, who shall say which is right and which is wrong, so far as pure logic or technical construction is concerned. Without invading the sacredness of the judicial conscience, now advancing the control of the judicial mind by popular clamor, we venture to predict that the aggregated voice of the people, driven to unanimity by the necessities of the situation, will eventually determine this grave question. No judge is to be censured or questioned for a decision rendered according to the lights of his own intellect. No candidate for judicial office is to be pledged to any policy or upon any legal question. But this much is to be

gathered from judicial history. When the two great political parties of the country were divided upon great questions, involving opposite constructions of the Federal Constitution, the great popular majority through its chosen appointing power, selected the Supreme Justices of the United States, from among those distinguished jurists who held well known views upon constitutional policy and construction, in harmony with the popular demand.

We think, without violating the delicacy due to candidates for judicial office, that we may not only go to the polls and vote for Judges who are well known to coincide with our views upon the laws of appropriation, but we may urge and influence others to do likewise. It is inevitable that the will of the people expressed through the ballot box will sooner or latter determine the question. There is no time like the present.

Kern County Gazette.

The Montgomery Grant.

Nearly thirty years ago a scheme was put through the Legislature, which, upon its face, promised to be a great public improvement, calculated to reclaim and improve an immense body of land in the lower San Joaquin valley at private expense. It was supposed at that time that the swamp and overflowed lands in Fresno, Tulare and Kern, extending from Bakersfield into Fresno county, were almost the only available agricultural lands in that section of the State. A glance at the map of the State will show the immense tract of land affected by an act passed in 1857, the State granting to private individuals the odd sections of all the swamp lands in Tulare valley, conditioned upon their reclaiming the entire body of swamp lands. The act provided for the construction of canals of sufficient width and depth to afford a convenient passage for boats of eighty tons burden. It also required that the lands should be so drained and leveed as to make them susceptible of cultivation. Failure to comply with these conditions was to work a forfeiture of the grant. The grantees of the State were not to have any of these lands until they had completely reclaimed all of the land and constructed a navigable canal, extending from Kern river to the San Joaquin river. In 1862 the grantees obtained the passage of a supplementary act, which gave them more favorable conditions by dividing the lands to be reclaimed into three districts, upon the reclamation of either of which the title to odd sections thereon should vest in the grantees. The act also extended other favorable conditions to the grantees, not contained in the original act, but the leading conditions being those which were stated to be the consideration, for the grant still remained the same—namely, the reclamation of the lands, by so draining and leveeing as to make them susceptible of cultivation; and the construction of navigable canals of sufficient width and depth to afford passage for boats of eighty tons burden.

Ten years passed. The ship canal remained, as it still remains, a creature of the imagination, existing not even on paper. The entire body of land

was still an unclaimed wilderness of bog, water and tules. No attempt had been made at reclamation. The supplementary act of 1862 had provided that the Governor and Surveyor-General should approve and certify to the reclamation before any title should vest in the grantees. In order to obtain this certificate a dam was commenced, designed to temporarily hold back the waters of Kern river until a report could be secured, establishing the fact of reclamation. Even this subterfuge was a failure. The dam would not hold the water. After waiting vainly for a month or two for the grantees to secure a temporary stoppage of the overflow, the person appointed to examine the law and ascertain whether or not the law had been complied with, was induced to make a dishonest report. This, combined with other influences, more readily imagined than defined, procured the issuance in 1867 of a patent for ninety thousand acres of land to the grantees. Not feeling secure in the fruits of their fraud in 1873, the grantees secured the passage of an act relieving them from the construction of the navigable canals, but were unable to avoid the insertion of a proviso requiring them to reclaim the land, and making such reclamation the distinct and only consideration for the grant.

In 1878 the patent thus issued corruptly and fraudulently was set aside and declared void by decree of the District Court, and after years in the Supreme Court the decree of the lower court has been finally approved. In the meanwhile the grantees in 1878 resorted to the Legislature. They obtained the adoption of a law giving them the lands described in the fraudulent patent upon proof that they had expended one dollar per acre, instead of requiring as originally contemplated, ship canals and complete and permanent reclamation. Even here the usual propensity of the grantees, to get something for nothing, again crops out, in the provision that the one dollar per acre expended should include State and county taxes. After the passage of this Act the grand finale in this drama of thirty years' duration takes place, when the State is defrauded of nearly a hundred thousand acres of land, by proofs under the Act of 1878. But what is the epilogue? Why, instead of becoming the owners of a body of reclaimed land susceptible of cultivation, and threaded with navigable canals they suddenly became riparian owners. They attempted to transform the gift of the State into a weapon of destruction. Not only in Kern county, but in Tulare, and in Fresno, irrigation and reclamation go hand in hand. The irrigation of the desert reclaims the swamp and renders it fit for cultivation. But those grants of the State are independent of State law or State control. They know no law, except their own desires. And what are their desires? No one can tell their limit. We know some of them. They wish to stop the diversion of water from all the rivers of Kern, Tulare and Fresno. They wish Kern, Buena Vista and Tulare lakes declared navigable, because such declaration would stop the diversion of waters from the rivers.

Every acre of the land given to these people was granted to the State, with the expectation that it would be reclaimed. The good faith of the State is pledged to that effect. The policy of the State, as shown by its laws, for the

disposition of swamp lands, is to effectuate their reclamation. Are these lands reclaimed? By no means. They are to-day in nearly the same condition in which they were thirty years ago. The floods of the rivers overspread them from time to time, limited in some degree by the reduction of volume of water caused by the diversion for irrigations above. To what base use is the generous gift of the State now being prostituted? Why some of the grantees now propose not to reclaim these lands, but to invoke the aid of the State and of the United States, to make them a perpetual swamp, and to declare Kern, Buena Vista and Tulare lakes navigable. The accomplishment of their object, the success of their efforts involve the annihilation of every farm watered from the tributary rivers. Water cannot be taken from streams emptying into navigable lakes. The entire Tulare valley must cease irrigation. Tulare, Kern and Buena Vista lakes must be maintained full to overflowing. All this is but another phase of the irrepressible conflict between appropriation and riparianism. Appropriation means irrigation, development and population for this valley; riparianism means an uncultivated desert, surrounding a great malarial swamp, fit only for frog wallows.

The Colusa Sun.

The Irrigationists Move.

The committee having in charge the legislation marked out by the convention held at Fresno, in November, 1884, met at Fresno, last Monday, and adopted an address to the friends of irrigation throughout the State, and called a convention to meet at San Francisco on the 20th of May. It also recommended the formation of clubs throughout the State, for the purpose of making the political parties take up the question and place the friends of the proposed measures on the State and Legislature tickets. The members of these clubs will be pledged to support no one not sound on irrigation. That is placed above politics. And why should it not be? What is there between the two parties so important as the fixing for the tens of thousands of happy homes? Who of all of us has felt any difference between the administrations of George Perkins and George Stoneman? But we all feel a difference between half of the State lying waste and that half covered over with pastures, and orchards, and vineyards, and gardens, and fields of golden grain. We all feel a difference between having a State with a population of five inhabitants to the square mile and a possible population of 105 to the square mile! In Southern California there are miles and miles, and millions upon millions of acres of dreary wastes, which, with the water now running to waste put over them, would support a dense population. The Sacramento Valley, although capable of producing a fair crop of small grain on the average season, is subject to short crop, and at best, most of the land can be cultivated but once in two years. With irrigation, it can be made to support almost one hundred times as many people as it can without it. Except along the margins of the river, where winter flooding can be depended upon, our

lands in this valley must be consigned to small grain. Fruit, it is true, *can* be grown upon most of the land with good cultivation, but the production of any orchard, year after year, can be more than doubled by once flooding during the winter. If then, an orchard will net \$100 an acre a year, without flooding, it will net more than \$200 with flooding, and does not this make it worth while to work for some laws that will promote irrigation? What political party can give you a difference of \$50 to \$100 an acre in the productions of the soil? Water can be put over about all the lands of the Sacramento Valley for \$3 or \$4 an acre, if we had the proper kind of laws. We mean that the canals can be made for this amount, and it will take, perhaps, as much more to fix the land for it; but what would be \$10, or even \$20, an acre for land all ready to water at any season of the year? Look on the land Roberts has been selling in the neighborhood of Colusa! It has sold as high as \$110 an acre, with the privilege of a ditch that will flood when the river is twelve or fifteen feet, without being prepared for the water! Does any one suppose that it would have brought \$80, or even \$50, an acre with no possibility of flooding it? We say, without fear of contradiction, that it would not. We have proof, then, that the possibility of flooding at high water has added at least \$60 an acre to the value of land; and if so, how much more would land be worth, fixed to flood at any time?

This is at home in the Sacramento Valley, where we have a fair average rainfall. There are portions of the State absolutely without water. It can be made fully as valuable as we can make the lands of the Sacramento Valley. We have some 64,000,000 acres of valley lands to be benefited by water. A system of irrigation will add \$100 an acre on the average to the value of this land, aside from improvements, or \$6,400,000,000 to the value of the land of the State. It would do more. It would give Colusa a population greater than that of Sacramento at present; it would give Sacramento a population greater than the present population of San Francisco, and give San Francisco and Oakland a population greater than that of New York and Brooklyn, with other cities increased in like proportion! This would add as much more to the wealth of the State. Then the added improvements on farms, the added orchards and vineyards, with the personal property thereon, would add as much more, so that we can say that the irrigationists hold out to you an added wealth to the State of \$19,200,000,000, with a capacity to support 10,000,000 to 15,000,000 more people than it can otherwise support!

There are boys who will now read this and live to wonder how we, an enthusiast, fell so far short of the mark!

Go south and look at irrigated land selling for as much as \$500 an acre, and the same kind of land a barren waste. Look right back at Colusa to the Roberts tract, and others to which we have alluded! Go, ask Judge Bridgford, Dr. Belton, J. B. DeJarnatt, Dr. Gray, Jasper Ford, R. T. Powell, J. H. Pope, L. L. Hickok, Capt. Ritchey, A. E. Potter, Oscar Robinson, Mrs. Banks, and others, right around Colusa, how much they would take per acre, and be forever barred from water!

And when you have looked there, and when you have asked these people, who have as yet a faint glimmering of what is ahead, then come and show to us, if you can, that we have drawn on the imagination for a single figure set down!

And why cannot all this go ahead without political action?

Our Courts hold that the common law of England, except where we have statutory law to the contrary, is the law of this State. Under that law no man had a right to divert water from a stream without returning it to the stream as pure as he found it. Each bank owner had a right to demand that the full volume of the stream flowed past his land. This put in practice would, of course preclude the possibility of irrigation at all. Now about all the bank owners—otherwise the riparian owners—favor taking the water out of the streams, but there are a few *end men*—men who own land at the *ends* of the same streams—who see big money in claiming that the water shall not be diverted. There is no law for paying these *end men* a fair compensation for what they have, and move on. They have the power to say, not only that there shall be no further progress in California, but that the millions of dollars invested in canals, the hundreds of millions of property dependent on diversions of water already made, shall be thrown away—to say that the magnificent orange groves, the orchards and vineyards and grass fields, dependent on the water, shall once more become a desert!

No man shall stand in front of the car of progress!

The Contra Costa Gazette.

The Benefits of Irrigation.

A State convention composed of all who favor the platform and objects of the Fresno Convention of Irrigators will be held in San Francisco on Thursday, May 20th. No supporter of riparian ownership will be permitted to participate in the proceedings. The convention will effect a permanent central organization, to perfect the scheme of laws already prepared by the Executive Committee and to urge them to success in the next Legislature. In their address to the members of the Riverside and Fresno Irrigation Conventions, the Executive Committee state that great areas are already made fruitful, and enterprising thousands under the protection of the doctrine of appropriation, produce a generous livelihood for themselves and a great surplus for export, which adds to the commonwealth. Millions of dollars are invested in canals and ditches primarily devoted to irrigation, while the systems which were built for hydraulic mining debouch upon plains that are athirst, and used for irrigation, will create greater wealth than gilded the dreams of their projectors.

But the acreage already subjected to irrigation is insignificant compared with the desert still unreclaimed. Our great interior valleys contain a territory of 64,000,000 acres, which is one and a fourth the size of Great Britain with her 30,000,000 people, and yet this immense territory, an empire in

itself, is inhabited by only 284,000 souls. The present unoccupied area of these valleys should support over 10,000,000 people, a result which can be brought about only by irrigation.

The conflict between riparian ownership and irrigation will doubtless be stubborn and prolonged. Some individual rights will be trespassed upon, and a certain amount of injustice will be done. But the people of California see more clearly every day the necessity of irrigation in her great valleys if they are to be built up and are to add to the population, wealth and resources of the State.

Tulare Register.

Myrick vs. McKee.

Friends of irrigation will not soon forget the famous decision by the Supreme Court, rendered in the case of *Lux vs. Haggin*, on the eve of the election two years ago, by which the ultra riparian doctrine was made, for the time being at any rate, the law of this land. That decision was rendered just in the nick of time to help the election of certain judicial candidates, and designedly so rendered, we have no manner of doubt, and that that help was most effective is beyond question. Now our Supreme Court consists in seven fat, sleek and well paid judges, of whom three are wise, and four are otherwise. As soon as we saw the text of that famous decision we telegraphed to the Secretary of State to ascertain what judges went out of office soonest and when. We received answer that the terms of office of Justices M. H. Myrick and S. B. McKee terminate next November. Of these two, Myrick was found upon the side of enlightened and progressive jurisprudence, in favor of the due appropriation of water for purposes of irrigation, and strongly opposed to such a construction of the law of riparian rights as should render that law unsuited to the natural condition of soil and climate that God established on this Coast ages before man was created. On the other hand, Mr. Justice S. B. McKee, holding in his hands the balance of power, the opportunity to decide what should be the law of this land, in a separate concurring opinion, more riparian if anything than that of his three riparian associates, fixed upon this dry and parched State the riparian law of wet and misty England, a law that has been obsolete at home for nearly a hundred years.

In our very next issue after the rendering of this decision, we took the ground that irrigators must make the election of Supreme Court Justices an issue in the next campaign. We took the ground that when the highest authorities in the courts of last resort disagreed as to what was law, the people had a right to determine at the polls what they would have as law. We still adhere to that proposition, believing in its wisdom and justice. It therefore follows that Justice Myrick, having shown himself upon the right side of this all-important question, should be re-elected to the position he now holds, but Justice McKee having shown that he holds opinions most unfortunate for one in

his position to hold, should come down out of a place he is unfitted to fill, and render it up to a more progressive and broader minded jurist. Justice Myrick should get the vote of every friend to irrigation; Justice McKee should not get a single one.

Oakland Times.

The irrigationists are evidently determined to win their fight in the next legislature. They have gone to work in the right way by organizing in every town and village in the southern and middle portion of the State, where irrigation is a necessity. They have men of brains at the head of their organization, and as these men know every law-maker who opposed the measure during the last session, it is very certain that but few of them will be re-elected and they should not be.

Dixon (Solano) Tribune.

There is no public question that is of more vital consequence to California to-day, than that of irrigation. The development of a greater part of the southern counties of the State, as well as Tulare, Fresno, Colusa, and other sections; admirably adapted to fruit and grains, depend in a great measure upon the proper solution of this question. Solano is only indirectly interested, but the *Tribune* will cheerfully lend its influence and support to that large body of citizens who are interested in securing such legislation as will promote the success of a practicable irrigation scheme. The water courses of California now run wastefully to the sea. Every drop of water so wasted, ought to be utilized in fertilizing and increasing the productiveness of a large area of land that is now comparatively valueless.

Resources of California.

Riparian Rights.

The people of California are now entirely awake to the importance of irrigation, and the necessity for laws establishing and regulating the use of the waters of the natural streams of the State for that purpose is generally conceded. This sentiment is bound to find expression through the law-making powers, which will result in defining the rights of irrigators and riparian claimants. This is a question in which the vital interests of our State are involved, for without irrigation an immense area of fertile and valuable land could never be cultivated and would remain barren as the Desert of Sahara. We are in favor of the condemnation of the rights of all riparian owners under the old common law; an equitable compensation for such rights; and the establishment by legislation of the right to use the waters of the natural streams of this State for this purpose of irrigation; and such other regulations as will prevent the monopoly of water and the unjust taxation of those who make a lawful use of it.

Kern County Californian.

A New Paper.

We have received the first number of the *Irrigator*, a paper published at the new town, Selma, in Fresno county. It is respectable in appearance, and, in its journalistic merits, highly creditable to the editor and manager, W. T. Lyon. Speaking of the name selected for his paper, he says: "After considering all names suggested and consulting with some of the leading citizens of the section, we concluded to give the paper a distinctive title, one that would be suggestive of its surroundings, so we fixed on the name *Irrigator*. Irrigation is the great backbone of our section. Without water our land would be a desert waste, but with it it is a blooming garden. Every farmer in the district is an irrigator, and every business man in town is interested in sustaining and extending the blessings to be derived from irrigation; therefore, as the mouthpiece of the farmers and business men, what more suggestive title could we have assumed for our paper?"

Stockton Mail.

Let us Irrigate.

The San Francisco *Alla* has performed a valuable service to the whole State by taking the lead in the advocacy of irrigation and maintaining the position with its accustomed vigor.

This should be considered the question of all questions affecting the vital interests of California, with the exception of that of the expulsion of the Chinese. Our State is not at present, take it all in all, developed up to more than one-quarter of its possible productiveness. Nothing would develop it so rapidly, so completely and so permanently as irrigation. It is sufficient for present purposes to consider only the region contiguous to Stockton. Stockton ought to have a population equal in numbers to the present population of the city and county, and the county outside of the city should be sustaining to-day in active agricultural, viticultural and horticultural industries fully thirty thousand people, instead of its present fifteen thousand, or less. Nobody questions the outside possibilities of soil and climate. Old citizens and recent acquisitions, pioneers and tenderfeet—all are agreed that this will be a region of great productiveness some day.

The only question then is, how and when is the change to be brought about. As to the how, it is plain that the only thing needful to make this portion of the valley blossom like a rose the year round is water. Water, water everywhere, nor any drop for the famishing vegetable life seen everywhere during the summer months, is what impresses all first observers. The rivers all run wastefully to the sea, while the plains on to which they might easily be diverted are parched and forbidding.

There are three sources from which this portion of the valley might be abundantly watered during the entire dry season. One is on the Stanislaus

River, on the south, another is the Mokelumne, on the north, and the third is the Salt Spring valley reservoir, between the two. It has been estimated that for \$150,000 the Stanislaus River could be made to irrigate 30,000 acres of land. The increase in the value of the land resulting from irrigation would more than double the cost of the lateral ditches. This will be done some day, and the Mokelumne will also be made to serve the farmer and the orchardist. What a change will be on the face of nature hereabout then. This county can produce anything that is grown in the State, if only the plants and trees are watered.

Why then let the rivers mock the plains and the soil withhold its most precious bounties? The old riparian law might have been good enough for England, but it is no more applicable to California than a law would be forbidding the navigation of our rivers by any sort of craft but those propelled by sail.

Los Angeles Express.

Organize for Irrigation.

The living, burning question of the day in Southern California is the subject of irrigation. Upon this problem turns the future of our fair land. Whether we shall continue to prosper and progress; whether the soil shall continue to yield its crops; whether our population shall continue to increase, or whether our vast valleys shall be relegated to a desert state and the happy, prosperous homes of our people be broken up, depends upon the issue between irrigation and riparianism. Unless the waters which flow down to us from the mountains are justly and equitably distributed among the people who inhabit the lands, to which it belongs, instead of being held as a monopoly by a few riparian owners, these great agricultural and fruit-growing counties will perish.

Until the Supreme Court of the State announced the astounding doctrine that the rule of the common law in England that running streams must be allowed to flow unvexed to their mouths, must be enforced in California, none but a few cattle kings and their retainers questioned the right of the people to appropriate water for irrigation. Our condition in this regard is as dissimilar to that of England as our mild and luxurious climate is to that of Labrador. We had supposed that the common law of a country which the courts should enforce is that body of customary law which has grown up from the especial circumstances and necessities of the surrounding physical conditions. But no, our court says the common law of England is the rule of decision, and that therefore there shall be no irrigation. It is true that the statute adopting the common law as the rule of decision provides that such shall be the rule only when the laws of the State do not provide otherwise; and it is true that the customary law of the State and many of the statutes recognize the right of appropriation of water for irrigation, nevertheless the broad proposition is laid down in *Lux vs. Haggin* that water cannot be diverted from a running stream.

Our readers will remember the action of the Riverside and Fresno Irrigating Convention. They will remember the labors of the committee appointed by the latter body to secure relief from the Legislature, and the failure owing to corrupt influences in the State Senate.

The Legislative Committee of the Fresno Convention have again met and a State Irrigating Convention has been decided upon. A plan of organization has been agreed to whereby the great end may now be attained.

We repeat that the prosperity and the very life of Southern California is at stake in this burning issue. Therefore let the people organize. We have the power to enforce our demands upon both political parties. This is not a political question, but it is a question that politicians dare not ignore.

Merced 'Express.

The Irrigation Convention.

It is probable that the proposed Irrigation Convention will meet at San Francisco, and will be composed of all classes interested in the development of the interior of the State, whether directly engaged in irrigation or not. We understand that the purpose of this convention is to exercise the consolidated influence of those in favor of the right to appropriate the waters of streams for agricultural purposes. We hope, in issuing a call for this convention, that the committee will make it plainly understood that the contest is against riparianism. The convention is to be essentially and emphatically anti-riparian. A riparianist has no more place in this convention than a Republican has in a Democratic Convention, or *vice versa*. The convention will represent those who look for a basis of action to the irrigation bills presented to the last session of the Legislature by the committee from the irrigation conventions, and who propose to be represented and served by officers elected at the next election, holding views in harmony with them. Strong legislative action is required. A constitutional amendment is needed to assert the doctrine of appropriation and to pronounce the common law rule of riparian rights unsuited to our conditions and necessities as well for agricultural as for mining purposes. Efficient legislation for the just regulation of the use and distribution of water is of great importance. Wherever the water is insufficient for all, economy in its use is a necessity, which should be enforced by legislative direction. And the towering necessity of all, is a gradual change from election to election of the personel of the Supreme Court, so that in time, instead of having a bench not in accord upon the great controversy over the law of water rights, we shall have a unanimous court. A divided court unsettles old law without establishing new. There is a remedy for this. Make the court unanimous either upon one side or the other of the question. When the judges cannot agree upon great questions, how are they to be finally determined? We are not now advocating the overthrow of a court in order to obtain one which will make law or usurp the powers of the legislature. But what the law is, must be settled. Only a unanimous court

can well establish it. The people are called upon to select the judiciary. They are expecting to take part not only in electing them, but also in selecting the candidates of the great political parties. Party lines are not now, as they were formerly, very strictly drawn in voting for judges. Learning, ability and experience in a judicial candidate command support without regard to partisan predilections. All other things being equal, however, party ties have great control, and no man can justly be taken to task for voting in such a case for his own party's candidate. Likewise without impropriety a voter who believes that the future of the State lies in the establishment of irrigation and putting an end to the present judicial delusion as to riparian rights, will select from candidates for judicial position those who are not tainted with riparian views.

Fresno Daily Evening Expositor.

The Leaven Working.

The leaven stirred into the body politic by means of the Irrigation Convention held in this city in 1884, and the Executive and Legislative Committees appointed by it, is working finely, and the subject of irrigation is being intelligently discussed all over the State. The leading journals of the coast are urging it as the leading issue before the people, and it seems now certain that the political parties will recognize it as the dominant issue when their party platforms are made. Even the close-fisted and stolid-headed money-bags and merchants of San Francisco are beginning to see that it is to their interests and the interest of their city to have the doctrine of riparianism wiped out, and the people left free to divert the water over the barren, dry and treeless plains to enrich and render it productive. They have been slow to learn, but now that the light of truth has dawned upon their vision, we may safely count upon at least their silent influence.

The wonderful results that have been accomplished in Fresno county by irrigation has done much to bring about this revolution of sentiment. In spite of opposition of all kinds, this county has continued to thrive, growing from an unpopulated barren sand plain in 1874 to the proud position it now holds, with its hundreds of thousands of acres under cultivation, embracing thousands of acres of orchards, vineyards and alfalfa fields; peopled by thousands of contented and intelligent families, all of whom are well on the highway to affluence.

A few at first were induced to try what could be done by the use of water. They found that our apparently worthless soil could be made to produce abundantly, and that this section was the natural home for the favorite fruits of the world; that the vine thrived and yielded in quantity and quality fruit that could nowhere on the globe be excelled, and that under the influence of our cloudless summer skies, raisins rivalling those of Spain could be produced; that from the fruit of the vine, wines not excelled by the product of France could be made, and that here were to be found all the elements needed to maintain a dense population of thrifty people. They noised about their

discovery, and others came and also succeeded, and they in turn induced others to come, until Fresno county has become known to all the civilized nations of the earth.

But the claim of the ranch owners on the banks of the streams that they owned all the water of the rivers sprung up. Common Law Judges held their claims to be valid, and a cloud was cast over water titles, and the appropriation of water in other counties for irrigation purposes was stopped.

But the Fresno farmers paid no attention to these decisions. They felt that they were unjust and not in accord with the fundamental principles of our Government, so they took the water and prospered; but other localities, under the injunctions of the courts, were not so united, and not so well prepared to defy the legal tribunals, so they have not progressed.

The Fresno Convention endeavored to secure the passage of laws that would enable the people elsewhere to reap the benefits that were to be derived from irrigation, but corrupt representatives and an indifferent public made the effort a failure; but the seed then sown is producing fruit, and it is now certain that the needed laws will soon be enrolled in the statutes of the State, and then an era of prosperity will dawn that will culminate in making San Francisco the second commercial city of the land, and the Sacramento and San Joaquin valleys the richest and most populous portions of the country. The elements are at hand to accomplish these ends.

Los Angeles Express.

A Stirring Irrigation Address.

The call issued by the Legislative Committee of the State Irrigation Convention is worthy the attention of every citizen. The question involved is of vast importance to the producers of the State, and through them to all other classes. Upon the water supply depends almost wholly the prosperity and future development of Southern California. A few years ago State Engineer Hall devised a system of reservoirs, which if adopted would render it unnecessary to depend almost wholly, as now, upon the streams. But even if a reservoir plan was adopted by the Legislature, and carried out by aid of State funds, the rights of the people in relation to the waters of the streams would remain the same, and these should never be surrendered. The Supreme Court may sustain the English riparian law (which is wholly inapplicable to the peculiar condition of the water supply of California), but the people can put on the bench and in the Legislature, men who will be governed by the needs of California rather than by the common law of England, and to do this it is necessary to organize.

Los Angeles Express.

The Question of the Hour.

The right of the people to the use of the water of our rivers and streams for the purpose of irrigation is not a political question. It is one that concerns all parties, and which virtually affects all the material interests of the State. If the demands of the riparianists are to prevail, the majority of the producers of this State will be in a pitiable condition. They will in many cases be deprived of the use of water now appropriated by them, and be forced to develop, at great expense, other sources of supply, and this in some localities, if not impracticable, will involve expense greater than the value of the land to be irrigated, a result equivalent to financial ruin.

Southern California has shown what can be done in the way of reclaiming arid lands by means of irrigating ditches. All the prosperous colonies of this county have been built upon the right of the people to divert the water of running streams for the purpose of irrigation. The whole country would be a desert to-day were it not for the exercise of this right. The water of the rivers has made the dry soil fruitful and has changed a treeless and unproductive region into one of the garden spots of the earth.

California is just entering upon an era of great prosperity. The thoughts of thousands of people at the East are now turned towards this Coast, and if the question of water supply is settled in favor of irrigators' rights we will soon have a very great increase of population. Dakota, notwithstanding its winters of bitter cold, has doubled its population in five years; certainly California, with its genial warmth and clear skies, should be able to do as well. When the laws of the State in relation to the rights of irrigators are brought into harmony with the needs of the people, and a feeling of security as to water rights is established, the inducements offered to settlers will be greatly augmented.

It is probable that the nominees of both parties for legislative and judicial positions at the coming election will favor the early settlement of this question in accordance with common sense rather than common law, and as the interests of the people require; but this is a matter that cannot safely be left to chance. The people must organize irrespective of party, so as to be in a position to demand the nomination of men known to be in the interests of the people. It is not a question that need to bring distraction into politics; on the contrary, it should have the effect of toning down political asperities and making the campaign a contest between parties which, on one of the leading questions at least, hold each other in mutual respect.

Oakland Tribune.

Irrigation to the Front.

The address of the State Irrigation Committee, published in another column, is food for political digestion. There is no announcement for the formation of an independent political party, but there is an intensity of pur-

pose pervading the address foreshadowing a distinct political organization in the not distant future.

Republican party leaders had best give the subject serious consideration. Here is an organized movement of a whole community to be met in the field of politics. Will the Republican party give it the cold shoulder, or will it take up the cause of irrigation, and gain the gratitude and the votes of the irrigators? The Committee says: "We must now make our force effective in the politics of the State, since in politics the Legislature to which we appeal, is generated. We must demonstrate the fact that there are political triumphs greater than the conquest of spoils, and that is to be done by going unitedly into politics to stay until our rights are secured."

The Republican party has ever been the friend of progress. Under the wise and beneficent policy of the party for twenty-four years, the internal improvement of the country by the settlement of the public lands has been without parallel in the history of nations. As a part of this policy a Republican Congress passed the act of 1866, which the National Supreme Court has held to be recognition of the doctrine of appropriation of water, setting the seal of disapproval upon the uncongenial and inapplicable riparian theory, in the Pacific States and Territories. This policy has reared civilization in a desert waste of country. All the irrigators ask is that this policy of the past be written into the ineffaceable law of the land.

The Republican party cannot hesitate to perpetuate the system of development framed and perfected by the statesmen whose glory was born of the troublous times of civil strife and whose names live in every heart.

The party cannot afford to repudiate the right of appropriation, and take back what was freely and generously given as the reward of energy, enterprise and industry.

Oakland Evening Tribune.

The Irrigation Issue.

The next Republican State Convention will have to deal with a new issue which has not heretofore had political consideration. The irrigation interests extending throughout the State, but mainly in the San Joaquin valley and the southern counties, have gradually attained a magnitude hitherto unknown. They are organizing for effective work in the next campaign, with the intention of forcing themselves into politics and demanding whatever their power will enable them to take in the way of measures for their protection.

In view of this fact it will be well to consider who they are, what are their claims, and why they venture into the domain of politics.

Irrigation is carried on all over the State, but the principal irrigating counties are San Bernardino, San Diego, Los Angeles, Kern, Tulare, Fresno, Merced, Stanislaus and San Joaquin. Most of the land in these counties is of the character known as desert land, and is unfit for cultivation without irrigation. The population thrives by irrigation. Irrigation is carried on through canals diverting water from the various streams. The right to use

the water is secured by appropriation long sanctioned by usage and custom and by the Courts, and embodied finally into the Code. So absolutely is irrigation dependent on the right of appropriation that in a legal sense the words are almost interchangeable. Without appropriation water cannot be had for irrigation.

There is an old common law doctrine that the waters of a stream must flow within the banks without diversion, and under this doctrine the use of its water for irrigation or any other than stock or domestic purposes is forbidden. But no one imagined that this law was or would ever become a rule of property in this State, because it was inapplicable to our dry climate and meager rainfall.

A little over a year ago, however, three Judges of the Supreme Court held for appropriation, whilst the majority, four of the Judges, resurrected the old English common law doctrine, holding that the water of a stream cannot be used for irrigation if any one owning land upon its banks says no.

At this a common fear seized everyone connected with irrigation, lest this should become the established rule of property in the State, to the utter destruction of irrigation.

They immediately appealed to the Legislature for some protection, but obtained nothing. Since then their alarm has increased to almost a panic. They are arming for a fight. Their just demands have been denied, and they are about to use their united power to take by political force that which they are refused.

These irrigating counties poll about thirty-three thousand votes. They are greatly exercised over this question. Irrigation is their bread and butter. Politics naturally sink out of sight with a people under such conditions. The Republican State Convention ought to recognize the justice of the irrigators' claims and take a stand for the right of appropriation if it would secure the lion's share of this vote. Alameda county ought to send a delegation to the Convention who are properly impressed with the importance of developing the interior by irrigation. The flourishing country builds up a populous city.

San Francisco Examiner.

Irrigation.

The necessity for a well-ordered and thorough system of irrigation cannot be too forcibly impressed upon the minds of the people of California. Nor is any section of the State more deeply interested in reclaiming the desert lands and extending the benefits of profitable cultivation of the soil than San Francisco. This city is absolutely dependent on the prosperity of the interior of the State for its own advancement. It cannot maintain its position as a commercial metropolis, or widen and extend its influence as a center of trade, without a populous and prosperous community to back it. Nor does it require any argument to demonstrate to intelligent minds that irrigation is the life and soul of industrial progress in California. Without it the area of

our vineyards, orchards and wheat fields would be much reduced. This is so evident that even a child can appreciate the fact.

Under these circumstances the *Examiner* has felt that it is unnecessary to apologize to the people of this city for so frequently recurring to the subject. It would be greatly in fault had it omitted to do so. The business of a newspaper is to put before the public questions of urgent necessity and impress upon the people engrossed in their own personal affairs, matters which virtually affect the welfare of the community. In previous articles we have shown that it is impossible for California to advance in her career of marvelous prosperity, or even maintain her present conditions of development, without an irrigation law annulling the obsolete doctrine of riparian rights. It follows, as a logical demonstration, that if the State should recede in material wealth, or stop short in its career of progress, San Francisco must share in the decline and abandon forever all hopes of realizing those grand possibilities which appear so alluring in her future.

To make San Francisco a city rivaling in all the essential elements of progress the great cities of the East, every acre of the rich lands of California must be subjected to profitable cultivation. It must be the distributing point for all the magnificent area which sweeps in waving grain fields and blooming orchards between the mountains and the ocean. To accomplish this, the waters of the rivers and streams must supply the arid lands for the fructifying influence of production. A well-regulated and lawfully provided system of irrigation can alone do this, and a Legislature thoroughly alive to the importance of this imperative necessity can alone assure such a system. No greater duty, therefore, devolves upon the people of this city than the selection of representatives to the next Legislature who will make it their especial business to co-operate with the movers for a plan for the general irrigation of the lands of the State. The subject should enter into all political considerations and should be borne in mind in all calculations and discussions having for their object the well-being of California and the growth and permanent prosperity of the city of San Francisco.

Oakland Tribune.

Storage Reservoirs for Irrigation.

It is asserted by some of the newspapers of the State that a compromise may be effected between the riparianists and the irrigators by the construction of huge reservoirs in the mountains and foot-hills for the storage of the surplus waters of winter floods and the melting snows of summer, and thus the war of extermination now raging between the two contending factions be brought to a peaceful termination. Compromise measures sometimes effect great good, but this is an emergency where no compromise is possible. The suggestion of the storage dams as a relief and a remedy for the difficulty would seem to imply a division of the water between riparianists and irrigators, the natural flow of the water to go to the former and the contents of the

reservoirs to the latter. But aside from the fact that on many of the most important irrigation streams of the State no suitable sites exist for the construction of impounding reservoirs, and on other streams it would be impracticable to build reservoirs of sufficient capacity to supply the lands already irrigated, not to speak of the vastly greater area of dry land yet to be irrigated, such a suggestion of division implied by the proposed compromise measures is utterly impracticable and untenable. Take, for example, a stream like Kings River, from which over one hundred thousand acres is irrigated, requiring the application of at least two feet of water per annum over the whole surface, the volume of water required to be stored would necessitate reservoirs covering an area of five thousand acres with an average depth of forty feet. Those who are familiar with the watershed of that stream know that there are no such sites to be found, and, except at a cost utterly beyond the reach of the irrigators of the State, that amount of water cannot be impounded on that stream or any of its tributaries. The same may be said of the Kaweah and other streams equally important to the irrigation districts already partially developed. Such a compromise would imply that the greater proportion of the water now flowing must be wasted, and that no further extension of the irrigated area be permitted, but that only a portion of the lands already under irrigation shall be allowed the privilege of continuing to enjoy water, and that only after the expenditure of large sums of money in storage dams. The irrigators claim, and with justice, that all the waters in the streams belong to the lands on either side that can be reached by them, and that storage reservoirs, when built, shall be built for the purpose of extending the usefulness of the streams, and increasing the irrigable area, and not to permit the continuance of waste. Otherwise the money expended in reservoirs might as well be thrown into the sea at once, as the result would exactly be equivalent to it.

Santa Cruz Daily Sentinel.

Irrigation.

The believers in the doctrine that the waters of this State belong to those who will appropriate it to some useful purpose, and not to those who happen to own land past which it flows, are organizing for the purpose of making their wishes respected in the next Legislature. The vote in the last Legislature showed that the irrigationists had a majority of its members. But the riparianists, owing to their better organization, and their better command of parliamentary filibustering, succeeded in preventing the passage of proper irrigation laws. We have no doubt that these smart obstructionists thereby injured California more than can easily be estimated. The representatives of the irrigationists do not propose that there shall be a repetition of this performance if timely organization can prevent it. The Committee of the State Irrigation Convention, in whose hands the matter was left, have called a meeting of the Convention in San Francisco for the 20th of next month. A stirring address to the people of California has been issued, in which the

principles and objects of the irrigationists are vigorously set forth, and which advises the early formation of local clubs with the express object of making the water question a vital issue in the election of members of the next Legislature.

The address is able, and makes its points with clearness and vigor. Every disinterested person who has investigated the subject and is capable of forming an opinion upon it, will agree with the Committee when it says: "The English common law doctrine of riparian ownership is repugnant and inapplicable to the physical conditions of this State, because it permits no use of water outside the banks of a stream, unless by assent of the abutting owner. The streams which traverse the great interior valleys have their heads in perpetual snow. Riparian ownership denies their flow to the thirsty earth, and condemns it to evaporate and emission in the thankless sea. * * * Shall the streams be legally open to appropriation, or shall the law of riparian ownership lock the water within the banks? Shall the flow be useful or useless? The intelligence and enterprise of the State have already answered these questions: 'The water shall be for irrigation.'" The Committee say "the efforts of the last two years have recruited the ranks of the irrigators until we are an army." It is to be hoped that the army will prove to be better disciplined and led than were the irrigation forces in the last Legislature.

The address advises that political partisanship be subordinated to this great question in the next election, and that the irrigationists vote for no candidate for legislative honors who cannot be relied upon to advance the desired legislation. We believe an overwhelming majority of California voters are on the side of the irrigationists, and that the irrigation question overshadows all other issues in importance to the State. We hope to be able next winter to chronicle a different result from that which was reached in the last struggle on this momentous question.

Los Angeles Daily Times.

Anti-Riparian.

The importance of prompt, determined and decisive action in the war which the people of the State are called upon to make against the aggressive forces of riparianism is set forth in the address to the members of the Riverside and Fresno Irrigation Conventions, which we publish in another column. It is a strong and forcible appeal to those who have the future interests and prosperity of this great State at heart. The picture of future desolation, of discouraged and decaying industries and languishing pursuits which would result, were riparianism to succeed, is *not* a pleasant one to contemplate. Abundance of water for the irrigation of our vast orchards and vineyards and our fruitful acres must not be denied us, if we would see the industries that we have planted, the commerce that we created, continue in success and prosperity, and also make beautiful the thousands of acres ~~saye~~ ~~unoccupied~~ and unimproved. An ample supply of water for all needed irrigation will assure to Southern California a future of unlimited pros-

perity and growth. Without it the opposite condition must be anticipated. Our industries must languish, and immigration in this direction receive serious check.

Los Angeles County, with the vast interests which she has at stake, should not be backward in organizing an anti-riparian association. She should hold a convention in which every anti-riparian should have a voice, whatever his political faith or creed. The first object of such a convention of the people should be to declare, and to have their declaration embodied in the written laws of the State, that superior to and more inalienable than the right of riparian proprietors, is the sovereign right of the people of the State to use, for necessary agricultural purposes, the waters of our streams and rivers. No power should be sufficient to lock their waters within their banks and withhold them from the thirsty soil.

Tulare Register.

Another Irrigation Convention.

The executive committee of the Fresno Irrigation Committee of last year held a meeting at Fresno Monday. There were present J. DeBarth Schorb, of Los Angeles; Will S. Green, of Colusa; R. Hudnut, of Bakersfield; L. B. Ruggles, of Mussel Slough; D. K. Zumwalt, of Visalia; E. H. Tucker, of Selma; J. F. Wharton and H. S. Dixon, of Fresno. Mr. L. M. Holt is absent in Chicago. An address to the people of California was prepared, and a State Irrigation Convention called to meet at San Francisco on the 20th of May.

We look for much good to come from this convention, and we are heartily glad that it has been called to meet at San Francisco. The city by the Golden Gate holds the political scepter in this State. Whatever she decides to do will be done. If the San Francisco delegation to the next legislature goes in for an enlightened system of irrigation laws, such a system will be forthcoming next winter. If, on the other hand, the itch that ever itches and never can get scratched enough, gets into the palms of the San Francisco legislators, we may as well hang our harps on willow limbs and cease to sing of verdant fields, orchards of luscious fruit, of the raisin and of wine.

The more thoughtful men of San Francisco now realize that the material prosperity of that city depends as much upon irrigation as do the business interests of the towns of the valley. But it is one thing to see a truth and quite another to act upon it. It is hardly to be supposed that merchants, bankers, manufacturers and professional men should know just what manner of irrigation system the agricultural sections need. This the irrigation convention and the press of the city must teach them. But even that is not enough. The local politics of the metropolis are in such a state, that the business interests must be aroused to effective action, in order to keep political sharps from making every needed reform a tool with which to extort money from one combatant or the other. The convention will have a two-fold purpose,

to enlighten and to arouse the business men of San Francisco upon the all important subject of irrigation.

San Francisco Chronicle.

The Irrigation Question.

It would seem hardly necessary at this date to enlarge upon the manifold benefits to be secured to the vast interior valleys of California from the construction of extensive and intelligently managed systems of irrigation canals. One would think that by this time every intelligent person would have become so well acquainted with the principal points in the matter that no further enlargement thereon would be necessary. Judging from the tone of much that is being written just now on the subject, however, there must be thousands of voters and many newspaper writers who have yet to learn the a b c's of the irrigation alphabet. They are just awakening to the fact that in this they have been far outstripped by sections where a much later beginning was made in the matter, and that while in such a comparatively "new" State as Colorado the fundamental laws have been made to conform with the demand for the use of streams for irrigation, here we are still floundering along in the slough betwixt the doctrines of appropriation and riparian rights, with a strong leaning towards the enforcement of the latter.

Lest there be any who as yet have not learned the distinction between the two—and it is evident that there are many such—a brief statement of the points involved may not be out of place. The old Mexican law from which our statutes regulating the right of appropriation are derived, was founded on the recognized fact that the waters in many of the streams, being absolutely essential to the successful cultivation of the soil adjacent thereto, belonged by right to the persons so making use thereof, regardless of any assumed riparian rights either above or below such locations. Under these laws the first-comer in any given section where irrigation was necessary had the right to tap a stream and take out so much thereof as was needful for purposes of irrigation. When all the water in the stream was thus appropriated there was nothing left for the new-comer, though he might purchase land on the bank of the stream, but to buy a water right from the prior appropriator. Here is where many abuses crept in and where some regulation by law would seem to be called for. Under the easy-going Mexican system there was water enough and to spare, and no one thought of monopolizing more than he had use for to the exclusion of a needy neighbor.

But with the American occupation a different state of affairs at once prevailed. With that unlovely characteristic so often met with here, as elsewhere, of "wanting everything in sight," the first comers in many of those sections where irrigation was found to be necessary, "took up" the natural flow of the streams in such quantity that very soon none was left for any one else, and this regardless of the fact that it was impossible for them to make good use of a tenth part of their appropriation. The plan

adopted was for a dozen or more of settlers to claim all the water running in a given stream and then apportion it among themselves at so many hours or days to each ranch. This gave the claimants an assumed title to all the waters running, whether they utilized it or not, and effectually cut off any outsider from participation therein. To be sure, one locating on the stream below the original appropriators might be allowed to use the waste water which was graciously allowed to flow down after all had been used that the most wasteful manner could suggest, but he was liable at any time to have such precarious supply cut off by the sale of water rights above him. What right one man, or a set of men, had to claim any more water than they could possibly utilize on their land, to the exclusion of others, is not apparent, and if by a shadow legal, still it is by no means just. Yet that is the way in which many fortunes have been made in this State. Men have for years "claimed" the entire flow in certain streams, though not utilizing a tenth part of it, and then have sold such claims for prices as high as \$1,500 and \$2,000 an hour for a portion of their assumed rights.

Many most flagrant instances of persecution and injustice have sprung up under this system of allowing a man's greed to be the only gauge by which should be measured the amount of water claimed by him. This is where the most stringent regulation by law is necessary, and while it is now a rather late day to talk of such regulation, it is nevertheless necessary in order to prevent future "hogging" operations of like nature.

The riparian doctrine, which is the exact contrary to that of appropriation, is based on the old English common law. This is founded on the customs and necessities of a country where irrigation is unnecessary and unknown and where running streams have but two uses—navigation and furnishing a means of power for mills, etc. Under the riparian law every owner of land on the banks of a stream has the right to have the natural flow of that stream pass by his door undiminished and unchanged in either quantity or quality by any one above him. Under this law the owner of an acre of ground near the mouth of a river has the same right as the owner of a thousand acres near the source. He who takes out a portion of the stream to furnish power for a mill must carefully provide for the return of that water to the parent stream. The enforcement of this doctrine is seen to be at once fatal to any system of irrigation, since water so applied is forever lost to the stream whence it is taken. By its enforcement no one but the owner of the land at the mouth of the water-course could by right divert any portion upon his land. In the first settlement of the State the water of many streams was conducted by ditches to a considerable distance from the location of the original river-bed, and in some instances none of it was used on lands contiguous thereto. Under the riparian doctrine this is a wrongful diversion, and none of the original claimants have a right to the use of the water. What hardship the enforcement of this doctrine would work, only those familiar with the affairs in the irrigated sections of the State fully know.

The riparian doctrine was never meant to apply to an irrigating country and sooner or later the laws of California must be made to conform to the necessities of the situation. In Colorado this was long since recognized, and under their intelligent system of laws on water rights, that State is having a most gratifying growth.

About the only argument that is urged against the substitution of appropriation for riparian rights is that under the former men will claim large bodies of water for purposes of speculation, and that immense monopolies will spring up. This is a matter for after consideration, and is one that may be very easily regulated by law after the change demanded in the fundamental laws shall have been made.

The establishment of irrigation systems, even under the uncertain status of our present laws, has worked a transformation in many localities, but by far the larger part of the State is still undeveloped, though abundantly supplied by streams, because capitalists are loath to risk their money where a riparian right decision is liable to checkmate their plans at any time.

The objection is sometimes met that by the adoption of extensive irrigation systems the navigation of some of the streams will be injured or ruined. This of course can only apply to the Sacramento and San Joaquin rivers. Whether this is a danger to be feared or not, an example in the southern part of the State may show. The Santa Ana River, which traverses the counties of San Bernardino and Los Angeles, is one of the principal sources of supply for irrigation purposes, many of the most thriving colonies deriving their entire sustenance therefrom. It is tapped by numerous irrigation ditches at various points, and here a singular fact exists. Although within a short distance of the point where it debouches upon the plains from its mountain source, every drop of water in the channel is diverted into a number of canals, and the bed may be crossed dryshod, still ten or twelve miles farther down there is again an abundance of water flowing, which is in turn diverted, and the same phenomenon is repeated two or three times more before the sea is reached. This is due to the underground flow which finds its way to the surface, and shows on a small scale what might be expected were a number of large ditches taken from the two navigable streams mentioned. There is no probability that it would in any way affect their navigability for the worse, and even if did, the growth of the section traversed by those ditches would in a short time warrant the construction of railroads, which would quickly replace any facilities that might be injured by the use of the water for irrigation.

San Bernardino Daily Times.

We have received from the Irrigation Committee a form of the articles of association, by-laws, and pledge for anti-riparian irrigation clubs, which though drawn in highfalutin language, filled with buncombe and twaddle that detract from its strength, nevertheless presents in its verbiage some facts which are of direct interest to the whole people of this Coast, and es-

pecially to us of Southern California, to whom irrigating water is life. The application of the common law of England, as it applies to water courses, to our section, where the conditions are so opposite, is an absurdity of law, and a foolish observation of musty precedent. We would guarantee that English courts themselves, in their colonies where the conditions are different to those in the mother country, would not be bound by rules that applied to the latter. In a country where water is only useful for manufacturing and navigation, where irrigation is never dreamed of, the rule that water should not be diverted from a stream unless it was returned in undiminished quantity, is correct. But in Southern California, where the streams are not navigable, where the water is not used for manufactures, where it has either got to be diverted from its natural channels and consumed, or the country be an uninhabitable waste, such a ruling based on common law precedents, is an extreme absurdity.

Los Angeles Weekly Mirror.

Anti-Riparian.

The importance of prompt, determined and decisive action in the war which the people of the State are called upon to make against the aggressive forces of riparianism is set forth in the address to the members of the Riverside and Fresno Irrigation Conventions, which we publish in another column. It is a strong and forcible appeal to those who have the future interests and prosperity of this great State at heart. The picture of future desolation, of discouraged and decaying industries and languishing pursuits which would result, were riparianism to succeed, is not a pleasant one to contemplate. Abundance of water for the irrigation of our vast orchards and vineyards and our fruitful acres must not be denied us, if we would see the industries that we have planted, the commerce that we created continue in success and prosperity, and also make beautiful the thousands of acres as yet unoccupied and unimproved. An ample supply of water for all needed irrigation will assure to Southern California a future of unlimited prosperity and growth. Without it the opposite condition must be anticipated. Our industries must languish, and immigration in this direction receive serious check.

Los Angeles county, with the vast interests which she has at stake, should not be backward in organizing an anti-riparian association. She should hold a convention in which every anti-riparian should have a voice, whatever his political faith or creed. The first object of such a convention of the people should be to declare, and to have their declaration embodied in the written laws of the State, that superior to and more inalienable than the right of riparian proprietors, is the sovereign right of the people of the State to use, for necessary agricultural purposes, the waters of our streams and rivers. No power should be sufficient to lock their waters within their banks and withhold them from the thirsty soil.

Santa Cruz Daily Sentinel.

Irrigation.

The believers in the doctrine that the waters of this State belong to those who will appropriate it to some useful purpose, and not to those who happen to own land past which it flows, are organizing for the purpose of making their wishes respected in the next Legislature. The vote in the last Legislature showed that the irrigationists had a majority of its members. But the riparianists, owing to their better organization, and their better command of parliamentary filibustering, succeeded in preventing the passage of proper irrigation laws. We have no doubt that these smart obstructionists thereby injured California more than can easily be estimated. The representatives of the irrigationists do not propose that there shall be a repetition of this performance if timely organization can prevent it. The Committee of the State Irrigation Convention, in whose hands the matter was left, have called a meeting of the Convention in San Francisco for the 20th of next month. A stirring address to the people of California has been issued, in which the principles and objects of the irrigationists are vigorously set forth, and which advises the early formation of local clubs with the express object of making the water question a vital issue in the election of members of the next Legislature.

The address is able, and makes its points with clearness and vigor. Every disinterested person who has investigated the subject and is capable of forming an opinion upon it, will agree with the Committee when it says: "The English common law doctrine of riparian ownership is repugnant and inapplicable to the physical conditions of this State, because it permits no use of water outside the banks of a stream, unless by assent of the abutting owner." The streams which traverse the great interior valleys have their heads in perpetual snow. Riparian ownership denies their flow to the thirsty earth and condemns it to evaporate and emission in the thankless sea. * * * Shall the streams be legally open to appropriation, or shall the law of riparian ownership lock the water within the banks? Shall the flow be useful or useless? The intelligence and enterprise of the State have already answered these questions: 'The water shall be for irrigation.'" The Committee say "the efforts of the last two years have recruited the ranks of the irrigators until we are an army." It is to be hoped that the army will prove to be better disciplined and led than were the irrigation forces in the last Legislature.

The address advises that political partisanship be subordinated to this great question in the next election, and that the irrigationists vote for no candidate for legislative honors who cannot be relied upon to advance the desired legislation. We believe an overwhelming majority of California voters are on the side of the irrigationists, and that the irrigation question overshadows all other issues in importance to the State. We hope to be able next winter to chronicle a different result from that which was reached in the last struggle on this momentous question.

Martinez Daily Item:

The Irrigation Question.

At a meeting of the Legislative Committee of the State Anti-Riparian Irrigation Association, held at Fresno on Monday, it was resolved to hold a convention at San Francisco on Thursday, May 20th, for the purpose of effecting a permanent central organization, for the purpose of formulating plans to perfect the irrigation laws at the next session of the Legislature, and also to lay plans for action during the coming campaign. This question will enter largely into party councils, and will cause no little discussion. We have received a supply of documents from the Committee, and shall refer to the question occasionally.

Santa Cruz Daily Sentinel.

The Irrigation Convention.

Santa Cruz should be represented in the Irrigation Convention which will meet in San Francisco on the 20th of next month. The object of the convention is to organize and properly direct the efforts of those who approve of the principles of the irrigation measures introduced in the last Legislature. It is desired to make the irrigation question a controlling issue in the next State election. The manifesto of the Executive Committee of the Fresno Convention says: "Through this organization it is proposed to inform both parties that we know no politics but irrigation, and that our battlefield is on the irrigable plains upon which the future of California is to be exploited." It is impossible to exaggerate the supreme importance of this irrigation question to our State. California will be a hobbling cripple if the riparian doctrine prevails; she will be a robust giantess of unrivalled powers and queenly mien if the irrigation doctrine is established. That doctrine is already established in the will of a vast majority of our people. All that is needed is to give that will a legal form and direction. This is the object of the proposed convention.

The position of the *Sentinel* on this great question is well known. From the beginning of the agitation we have repeatedly and earnestly pleaded for the principles contended for by the irrigationists. Before the last session of the Legislature we called attention to the legal and constitutional principles underlying the discussion, and advised the members of the Legislature to study those principles before they went to Sacramento. And we predicted that unless the members studied the question for themselves beforehand, they would find themselves all at sea and involved in fogs and uncertainties by the legal technicalities of the riparianists when the contest came. The prediction was amply fulfilled. The dilatory filibustering tactics that defeated the irrigation measures would not have succeeded had it not been for sophistical appeals based on alleged injustice to the riparianists—appeals which were baseless, and would have been vain, but for the ignorance of the principles involved in the discussion on the part of those members who, though

favorable to irrigation, were too conscientious to inflict a possible injustice by hasty action. When at length the light of reason dissipated the fogs of sophistry, it was too late in the session to break the parliamentary tangle in which the bills were purposely involved by their enemies.

Santa Cruz county, owing to her peculiar topography and favorable location, will not be benefited to as great an extent as most other counties by the proposed irrigation laws. But, if she would reap no benefit at all from them, that would be no reason why she should not do all she can to further the cause for irrigation. Our county will prosper in proportion as the rest of the State prospers. Each of our citizens who possesses a spark of State patriotism takes pride in the general advancement of California, and should be ready to do his share in the work of pushing on the car of progress. Therefore, our county should send representatives to the San Francisco Convention next month. The plan proposed by the committee is the formation of one or more irrigation clubs in each county, the object being to effect the purposes above indicated. These clubs will send delegates to the convention, and thus every locality in the State will intelligently co-operate for the accomplishment of the common object, by carrying the irrigation issue vigorously into the next general election. There can be no more worthy or patriotic act by our citizens at this time than the formation of an irrigation club.

Tulare County Traver Tidings.

What Will Win.

Of the meeting of the Executive Committee of the State Irrigation Convention, which convened at Fresno last Monday and promulgated an address narrating things past and prophesying much good to come, the San Francisco *Alta* says: In its antitheses may be read the certain future of California. If our laws are brought into harmony with our physical conditions and natural necessities, this State at once opens her acres to the densest and most prosperous population in the world. If our laws remain at right angles to those conditions and necessities the desert now untouched remains bald and barren, and invades the green oases which are now supporting a prosperous people. California is more talked and thought about in the East now than when she shot into notice and notoriety upon the discovery of gold, for there are more people to talk and think. A land that produces the orange, grape, almond and fig, appeals now as powerfully to the fancy as did the production of gold thirty years ago. The agricultural and horticultural possibilities of a winterless country, where the palm waves its branches and the magnolia blooms the year through, lure and allure, and conjure with greater power than the promises of gold to be dug from the hills. It opens up the prospect of a redistribution of population. It promises a useful drain for the benefit of the older States, that leaves within them better opportunities for all who stay, while there is no rule by which to measure the certainties offered to all who come blessed with a willing spirit and ready for

the light toil which wins a competency. Now is California's more than golden moment. It is not worth while to dally over details. Let the work outlined by the committee go forward to success, and the processes for utilizing water and storing it for irrigation will unfold and keep pace with our necessities.

A good system of irrigation will do more to enhance the value of real estate, says the *Modesto Republican*, and give larger returns in fruits and cereals than any other artificial means that can be adopted. This year crops will be abundant, for the reason that the rains have been plentiful, which is all the evidence necessary to prove to the farmer that he needs water to irrigate his land with. There are plenty of small fruit and vegetable farmers who irrigate by means of windmills and artesian wells. They find it profitable because they are enabled to raise and market fruits and vegetables every season of the year. and with our soil and climate millions of small, comfortable and happy homes can be made in California.

Stockton Independent.

The irrigation counties are credited with about 33,000 votes. The irrigation issue will be one of the strongest in the fall campaign, and the Republican Convention will be called upon to consider it as affecting vitally the prospects of its State nominees. The fight of the irrigators has justice on its side, although their panicky fear of disasters to follow upon a possible confirmation of riparian laws may lead them into occasional exaggerations of the wrongs suffered from their opponents. Riparian owners are not to be thrust aside without just regard for rights they have acquired under legal rulings in this State, but the needs of the majority of the people in the irrigation counties demand that the law shall be revised and riparian rights abridged. The support of the Republican Convention should be given to the irrigators by all means.

West Oakland Sentinel.

Irrigation.

No more important question has ever come before the people of California than that which relates to the irrigation of arid and so-called desert land. These lands, which lie in the great valleys, comprise a large portion of the State. They are susceptible of the highest condition of cultivation and, with water, are perhaps the most productive on the continent. The question is, shall they have such necessary water?

The fact that the running streams and reservoirs in the mountains are capable of supplying this essential requirement of agriculture, if properly distributed, is unquestionable. But there is an impediment, constructive or real, to the utilization of this water. A few of the proprietors of lands bordering on the streams claim that under the English common law doctrine of

riparian rights, which they say has been recognized by our Supreme Court, they have the exclusive use of the water, and that it cannot be diverted, from its natural channel for any purpose whatever.

It is not claimed that the riparian proprietors can have any use for this natural outflow from the mountains. Indeed, their right to use water flowing by their banks, in any way that will reduce the volume, is denied under the authority of the same common law doctrine. It must simply pass through their lands on its way to the sea, to be lost in the waste of waters, or to be swallowed up in the tule swamps. Meanwhile the desert lands, so prolific under the influence of irrigation, are dedicated or relegated to sterility.

Shall such conditions as these continue to exist? Will the Legislature refuse to annul the application of the common law by a declaratory statute, and give the thirsting land its imperative need and to California a widely increasing development and prolific production? Will it condemn the great valleys to barrenness? This is the issue without exaggeration and without coloring.

Santa Barbara Daily Independent.

To the Anti-Riparian Voters of California.

The *Independent* cannot give space to the long address of the Executive Committee of the State Irrigation Convention. It is not a matter which greatly concerns this section. But all persons interested will find it in any of the principal San Francisco dailies. There is no doubt that it is a matter of absorbing interest to the State at large, if not especially to us. The *Examiner* comments upon the address as follows: "The proposition that the soil of nine-tenths of the State cannot be cultivated without irrigation is too obvious for controversy, and that there is water enough in the streams which can be rendered available for this purpose is also beyond dispute. That every commercial, agricultural and business interest that we have already, or may have in the future, is dependent upon the lawful diversion of the water from the streams is also obvious. The question is, shall the legislative assistance needed be given? The people have it in their power to accomplish this great necessity. They are the source of power, the tribunal from which there is no appeal. But to render their efforts intelligent and effective, they must have a specific organization and definite ends. These are provided for in the address, and the plans proposed should command the very widest possible attention and the thoughtful consideration of every man in the State. Every one is interested in the subject. The citizen of the city, equally with the citizen of the country, will find in this question the hinge upon which the future of California will turn. It embraces every vital interest, every hope and prospect of the future, and the appeal which has been made addresses itself to the patriotism of the individual and the sense of right of the public."

Marin County Tocsin.

Irrigation.

The subject of irrigation is a living, burning issue in the southern counties of California, and indeed throughout the whole State. It is not less important to the mercantile and manufacturing interests of San Francisco than to the farmers, fruit growers and vineyardists. Their products are the safe basis of our wealth and prosperity. If the thirsting land is refused water; if the waving grain fields, the umbrageous orchards and the vineyards of the plains are left to perish, in order that long horned cattle may wallow in the swamps, our merchants and local manufacturers will soon be without customers. Indeed the very life of the State depends upon a victory for irrigation.

There will shortly convene in San Francisco an Irrigation Convention. It will not be extravagant to say that the future of California for prosperity or poverty will be determined by the success or failure of the movement which this convention has been called to further.

The decision of the Supreme Court to the effect that water can not be lawfully appropriated and diverted from the non-navigable streams for the useful and necessary purpose of irrigation, must not become the settled law of the State, or else the great plains and valleys must be abandoned. The rains of heaven which belong to these lands are precipitated in the mountains, and the inhabitants demand the right to reclaim the water as it descends in the streams. The cattle men and other riparianists insist that the water is not to be used. The mass of the people are for devoting it to useful purposes. We will see who is the most powerful!

This, in a nut-shell, is the significance of the irrigation movement. Let it be distinctly understood by all, irrigation means prosperity, riparianism means a parched land and poverty.

The Resources of California.

Let us Have Water.—The most Important Interests of the State in Danger.—Some Facts for the Consideration of the People.—Shall our Fertile Lands be consigned to Eternal Sterility?—The Atrocious Doctrine of Riparian Rights.

If there is one thing in which the people of the State of California are interested more than another, it is the question of water appropriation *vs.* riparianism. Beside this, all other questions dwindle into comparative insignificance. The wealth and prosperity of a large portion of our State is involved in this question, and no one can truthfully deny that the material wealth of California would be greatly multiplied by a practical system of irrigation. But, barring the progress to this much desired consummation, stands the bugbear of riparian rights, like a lion in the pathway, shutting off all advance, and condemning to perpetual sterility millions of acres of the most fertile land the sun ever shone upon, while the water which would render it

invaluable runs idly and uselessly by to the sea. Such a condition of things is not and cannot be right; it ought to be clear to the most superficial observer that irrigation will bring the greatest prosperity and result in the greatest advantage to the State. Nature has provided the means in the rivers and streams which furnish an abundance of water, were it properly distributed, to irrigate every acre of arable land in the State. The counties more particularly interested in this question are Fresno, Tulare, Kern, Merced, Mariposa, San Bernardino, and Los Angeles; but every county in the State, from Siskiyou to San Diego is more or less dependent upon irrigation for the cultivation of the soil. The prosperity and growth of the counties named, depends principally upon their facilities for agricultural pursuits. In order to encourage and foster these, irrigation is absolutely necessary; indeed, it is the one thing needful to continue these counties in their present path of progress. As an indication of that progress, we will instance the counties of Fresno, Tulare, and Kern. Through the two former counties runs Kings River. In 1870, less than one thousand acres were irrigated artificially from this river. In 1880, there were about sixty-five thousand acres, and in 1884, about ninety-five thousand acres. The average flow of water in Kings River, during the irrigating season, if properly saved and distributed, would be more than sufficient to irrigate five hundred thousand acres of land, at the rate which is now found sufficient in the older irrigated parts of the county. It will thus be seen that, by proper legislation, regulating the distribution of the waters of this river alone, it is capable of irrigating six times the area now cultivated, and at an average value of \$100 per acre, would give an aggregate value to these lands of \$55,000,000, and support a population of one hundred and thirty thousand. On the Kern River, which runs through Kern County, in 1867 less than one thousand acres were cultivated.

In 1880 there were about 40,00 acres under cultivation, and in 1884 the area of cultivated land had increased to about 50,000 acres. This increase occurred, despite a continued, harassing litigation on the part of riparian owners against the appropriators of the water. This litigation has retarded the growth of the county and prevented the investment of capital and the improvement of lands. The lands at present under cultivation form but a small part of the arable lands which could be irrigated by a proper distribution of the waters of the Kern river. Land in Kern county, with a proper supply of water for irrigating purposes, is worth at least one hundred dollars per acre, which would amount to \$30,000,000 for the lands in that county which are susceptible of being irrigated by the waters of Kern river. Irrigated districts support, at a low average, one hundred and fifty people to the square mile. As there would be about 460 square miles in this tract, it would support a population of 70,000. As to the effect of irrigation upon the growth and prosperity of a county, we may cite Los Angeles as an example: Lands in this county which now find a ready sale at from \$100 to \$200 per acre, in an unimproved state, could not have been disposed of at \$5 per acre until canals and irrigating ditches were constructed for irrigating them; they were comparatively worthless for purposes of cultivation, and a jack rabbit

would have found it difficult to obtain a subsistence upon them during the dry season; and this change in values has been brought about solely by the introduction of water. In 1879 some 57,000 acres of land were under cultivation and irrigated by the waters from natural streams, which yielded only 480½ cubic feet per second during the irrigating season, which gives an average of about 200 acres to each cubic foot of water flowing per second through the irrigating season. Here the water is under municipal regulation, and is distributed in such a way as to obtain the best results from the supply. No one is permitted to waste; each person takes as much as is needed and no more. No miasma-breeding, stagnant pools are allowed to accumulate, and the argument, so often used, that artificial irrigation engenders malarial diseases, is refuted by the report of a well-known and skillful physician, for many years a resident of Los Angeles—Dr. H. S. Orme—who, after a careful and thorough investigation of the subject, gave it as his opinion that the system of irrigation as adopted there was in no wise detrimental to health. The increase in the acreage cultivated since the introduction of water, the enhancement in the value of real estate and the wonderful accession of population in that section of the country is well known to all.

In Kern, Fresno and other counties, we find lands, which, before irrigation was resorted to, were regarded as desert lands, inhabited only by reptiles, and considered as not worth the Government price of \$1.25 per acre, now worth all the way from \$100 to \$250 per acre. The reference to these localities is quite sufficient to show and establish the effect of irrigation, and that this wonderful increase in values is attributable solely to the fact that the waters were diverted from their natural channels and poured upon the land. Such, then, is the effect of the doctrine of appropriation for a beneficial purpose, as contrasted with that of riparian ownership. The former condition of the country was not due, it is true, to riparian doctrine alone, but it is nevertheless certain, that under riparian law, which would require the waters of the rivers to flow in their natural channels, there could be no progress. The residents of the San Joaquin valley and Southern California are now menaced with a danger which may well cause the liveliest alarm. A majority of the Supreme Court have decided that the English common law doctrine of riparian rights is the law of this State. The court has in effect declared that no one but a riparian owner can touch the water in the streams. That is to say, he cannot put it to any practical use. If the genius of recession had labored to devise a plan by which the development of our fair State might be most effectually retarded, he could have hit upon nothing more likely to accomplish his object than this abominable doctrine of riparianism. Here is an agricultural community, blessed with a soil whose fertility and productiveness cannot be excelled; with a climate, equable and salubrious, with all the conditions necessary to health, wealth and prosperity fulfilled, save in the one fact, that the clouds of heaven do not dispense their aqueous treasures in sufficient abundance to moisten the parched earth, and bring forth the fruits and flowers and grain in their season. Throughout this parched and arid region, flow rivers and streams, whose life-giving waters are abund-

ant to make the desert "blossom as the rose;" yet, under this atrocious law, not a drop can be taken from the streams, except by one whose land borders upon its banks, and the poor farmer who is not so fortunate as to possess riparian rights, must sit quietly by and see his land parch, his crops wither, his cattle die of starvation, and utter ruin stare him in the face, while the water which would save him, runs to waste, conferring benefits upon no one. Surely such a state of affairs cannot long continue. Legislation must be had, and a contemptible minority must not again be allowed to defeat the will of the people as was accomplished in the last Legislature.

The right to appropriate the waters of the streams for purposes of irrigation, under wise and judicious restrictions must be accorded; this right is vital to the interests of the State. It is no local issue; the merchants and manufacturers of the cities and towns are interested as well as the agriculturists; we must irrigate to produce, we must produce to live. Where agriculture is crippled, commerce and manufactures decline. No State can afford to have a vast area of fertile agricultural land shut out and rendered useless by a few riparianists who apparently would sacrifice the best interests of the State to ensure their own pecuniary aggrandizement. A State Convention is about to meet, the object of which is to secure united action on the part of those interested, in ensuring legislative action which will protect and regulate the right to the use of water appropriated for purposes of irrigation. To the agriculturists, the vital issue of the coming political campaign, is appropriation vs. riparianism; all other considerations are secondary, Let the Convention take hold of this matter vigorously, and adopt such measures as will secure a united and determined effort at the polls to elect to office only those who are absolutely sound on this important question. It is purely a non-partisan issue, and all men who have the interest of the State at heart, should see to it that no man is elected to office, from Governor down, who has the slightest leaning towards the pernicious doctrine of riparian rights; withdraw support from every man, whatever may be his politics, who is not an outspoken, unqualified advocate of the doctrine of appropriation.

The friends of irrigation should organize at once in every portion of the State; by united effort they can win the battle; disorganized, they are powerless. The result in the last Legislature should furnish a lesson not soon to be forgotten. The riparianists are few in number but powerful in their wealth. Money, we all know, is a most effective weapon in politics, and this, without doubt, will be freely used. This influence, powerful as it is, can be and must be counteracted. The great masses of the people in the large cities and towns do not understand the merits of this question; they must be instructed. Agitate the matter in the newspapers, flood the State with circulars, explaining the nature and discussing the merits of the case. Let speakers be employed to address the people during the campaign and spare no effort to keep the question before them. The merchant and the manufacturer cannot fail to see the importance of developing the agricultural resources of the great San Joaquin valley and other portions of the State by irrigation. The one thing needful for these classes is an active, home market for their

wares and products. In order to secure this we must have population; in order to secure population we must offer some inducements to settlers. Men will not come to California to settle in a desert. Show them the great valley of the San Joaquin, parched and arid, then point them to some orchard or vineyard on the river bank and tell them, by irrigation you may make this apparent desert as bright, beautiful and productive as yonder garden; and the first question naturally is: how are we to obtain the water? "Aye, there's the rub;" the land is fertile and productive, the water is close at hand, the settler may look upon it, Tantalus like, but he cannot touch one drop to moisten the parched earth and make it smile with vegetation; it must flow through the lands of the riparianist, undiminished in quantity or quality, and the rich and fertile lands around are condemned to eternal sterility. The battle between the irrigator and the riparianist must be fought out in the Legislature. There the laws must be made which will determine the correlative rights of owners along a natural water-way, and we want, and must have, a Legislature which will enact laws guaranteeing the greatest good to the greatest number. This done, individual enterprise will do the rest, and provide irrigation where it can be practically and successfully used for the farmer's benefit, and open up to cultivation millions of acres of land, which, under riparian rule, would remain forever uncultivated. The doctrine of riparian rights must be stamped out, or our best and most productive lands must be relegated to the desert; to the occupancy of the coyote, the jack rabbit and the rattlesnake.

Alameda Encinal.

Irrigation.

The Executive Committee of the State Irrigation Organization has called a Convention to be held in San Francisco on the 20th day of May, and requests that clubs be organized in every county and send delegates. The purpose of the convention will be to perfect a central organization and adopt a line of policy that will secure proper action on this all-important subject by the next Legislature. The idea is a good one, and the work has begun none too soon. Such an effort should be made as will secure to our farmers their rights in the application of our water ways to their legitimate use. Both of the political parties should appreciate the fact that our husbandmen are alive to the protection of their interests, and that no candidates will receive their support who are not in favor of reclaiming the large area of desert land in the State, and bringing those lands lying near to the water courses to that degree of cultivation that their inherent fertility is capable of reaching. This is one of the most important issues that can come before the Legislature, and the efforts of the friends of irrigation should receive the hearty support of both the press and the people. As a cotemporary remarks, "The settlement of the irrigation question is of vital importance to the future welfare of the State, and it is to be hoped that the appeal of the Committee will receive general attention and eventually lead to a reform of the evils which now exist."

Vacaville (Solano County) Judician.

Among all the questions in which California is vitally interested, none equal in importance the problem presented by the decision of the Supreme Court of this State, by which irrigable lands of the interior are dominated and made subject to the procrustean processes of the English common law doctrines of riparian rights. A state of things which produced the English system of laws cannot be found in California. With essentially different conditions here, it must follow that the Legislature will make provision by which the plains possessed by the cattle king may be bathed in the crystal waters of the Sierras, and hundreds and thousands dwell happily when, but for its benign influences, there would be but a barren range. Here, in Vacaville, where without irrigation the grape of France, the olive of Spain, the orange of Sicily, aye, and the date palm of Egypt, repay lavishly the toil of husbandry, the question has not an immediate local application; but our concern in it is by no means less than in the counties of the San Joaquin Valley. The interests affected are so great, and involve consequences so momentous in their effects on the future progress and greatness of California, that the mind becomes dizzy as it contemplates the vista of possibilities which reach out before this State when once a wise and beneficent Legislature breaks asunder the shackles imposed on her by the narrow rules of the common law, and bids her revel in the glorious possibilities of her nature. The problem which will come before the next Legislature will call for statesmanship which can contemplate the possibility of denying to the otherwise barren plains of the San Joaquin a population as teeming as ever lived on the banks of the Nile. Population is what this State needs to give it the prestige her wealth demands and her future necessities in the National Congress. The party which takes up this question and makes it the leading one of the next political campaign, will deserve well of California.

The Resources of California.

Riparian Communism.

The attempt to establish the doctrine of riparian rights to the waters of the streams of California, whose climate is such that all her future growth is dependent on irrigation, and the diversion of the waters from their channels upon her arid plains, is as abhorrent to every principle of justice and right, law and order, public policy and private equity, as is the attempt of the fanatics of France, Germany and Russia to foist upon the world the ideas of communism, socialism, nihilism and anarchism. Were the socialists in power, anarchy would reign supreme; no rights of property or person would be sacred, and the ruin and desolation that marked the horrors of the commune of Paris would become widespread and general. The growth of such ideas, within the past few centuries, has resulted doubtless from the laxity of government, or diminution of despotism, combined with ignorance. That

state of society, in which shall prevail among all its members, the highest intelligence joined with the greatest independence of thought and action, will render the prevalence of such ideas impossible. We have not as yet attained such an absolutely Utopian condition in the United States or in California, and it is still necessary for us to combat ideas and principles whose tendency is to revolutionize society and establish a reign of anarchy.

To appreciate the force and application of this remark to the question at issue, let any one visit the principal irrigation regions of the State and see the many millions of dollars invested in irrigation canals and works, the thriving towns, the thousands of prosperous homes, the vast acreage in vineyards, the extensive orchards, the unbounded fields of alfalfa, supporting thousands of cattle and sheep, where formerly a single grasshopper could eke out but a scanty existence, all maintained by irrigation, and imagine the ruin that must follow the closing of the canals and the cessation of irrigation by the enforcement upon our people of a doctrine of law which declares that the waters of the streams must be allowed to flow in their beds, undiminished in volume, and unutilized, except for the watering of live stock and the turning of machinery. There are a few favored places in the State where irrigation from springs and artesian wells may be practiced without fear of interference from the riparian doctrine, but they are as a drop in the bucket compared to the hundreds of thousands of acres irrigated from streams on which it is sought to enforce the riparian principle, and the millions of acres that are yet to be irrigated before the State is prepared to receive the dense population she is capable of supporting. That the people of this State are to accept a doctrine of law which will sweep out of existence the greater portion of the improvements made by irrigation, and prevent all future development in that direction is too monstrous for belief. It is on a par with anarchism, for it means ruin and anarchy to the sections now dependent for life upon irrigation canals, and is to be combatted with the same vigor as the dangerous doctrines of communism, nihilism, or any other ism where tendency is to throw all organized society into confusion and destroy property.

Fresno Daily Evening Expositor.

Another Convert.

The *Bakersfield Gazette* which has hitherto been counted against the irrigation interests, has come out squarely against riparianism, and is now in a position to do its section of the valley much good. That it fully comprehends the question at issue is demonstrated in a recent article on the doctrine of riparianism. It says that the so-called advocates of riparianism do not urge the doctrine because they believe it right, but because they, themselves, desire to become appropriators. Pointedly it remarks:

“The truth is that the riparian rights doctrine, as advocated by its chief exponents in California, is used by them as a cloak for the monopolizing of water and its use in a manner totally at variance with the principle of law,

under which they seek to acquire it. The people should begin to understand that no irrigation is possible under riparian law, and that those who advocate it to obtain water for the purposes of irrigation, do so solely to trample upon the rights of those who have forestalled them in appropriating the water and to destroy the result of their labor and capital, expended by the appropriators in utilizing the water in cultivating the land, and in establishing thrifty homes and wealthy irrigation communities."

The *Gazette* exactly states the situation and the people should be shown the true animus of the so-called riparianists, that they may not be led into giving aid and comfort to them. The Anti-Riparian Irrigators' Clubs should take particular pains to show up this phase of the question. There is no honesty in the cry of the riparianists. Selfishness is at the bottom of their claim.

The Placer Republican.

The irrigation problem is looming up again, and promises to be one of the foremost questions in this State until it is satisfactorily settled.

Press and Horticulturist.

Irrigation Problem.

The Irrigation Convention at Fresno last week has issued an address to the people, which we print entire, as there is not a word too much in it. It is a plain statement of facts bearing on the water question that concerns every citizen of this State. Our future progress and welfare depend upon heeding the warning here given. If our laws are brought into harmony with the views thus expressed, the prosperity of our State is assured, and millions of acres of now waste and barren land will be thrown open to the world; but if the riparian law is allowed to rule, the growth of the State will be stunted and its fair proportions curtailed of much of its beauty. Thirty years ago the gold fields of California opened up to the world unbounded wealth and brought to this hitherto unknown land a horde of men whose only aim was not to produce and add to the wealth of the State, but to carry off millions of treasure to other lands, leaving nothing in return. The gold is gone, and most of those who disemboweled the earth to obtain it have passed away. The land now offers other millions to the new comer in the shape of the orange, grape, olive, almond and fig—a wealth far surpassing all its former golden trophies. It offers him a land of perpetual summer, where the palm waves its branches, the magnolia blooms, and nature puts on its most gorgeous apparel at a time when our neighbors at the East are shivering with the cold, waiting for the few months of the year when they can go forth and till the soil.

When they come here they are confronted by the law of the riparianist, which says that because England, a century ago, did thus and so, the Califor-

nia of to-day must be hampered in its growth, bound down by the iron rule of that far-off island. There no irrigation exists, and the only use they can put the streams to is navigation and to turn their mills. Here there is comparatively no navigation and but few mills, but irrigation is of paramount importance, and we should as soon think of using our grandfather's love-letters to do our courting with as to tie ourselves down to the use and adoption of such a law. Every stream should be compelled to do duty in making the land valuable; every canyon that can be dammed to hold the winter rain and melting snow should be made into an immense reservoir for the same great purpose, until every drop of water in our State be transmuted into luscious fruit or waving grain, to bring back for our use the gold we so freely yielded up to our neighbors.

It is strange that the people of California have neglected so long to see where their interest lay and have allowed the riparian system to get such a foothold on our coast, when it should have been made the foremost issue with all political parties, or rather one issue above all others, regardless of party and politics. It is no mere theory, but this section of California has shown what can be done by irrigation; it is the life-blood, not only of Southern California, but will prove the same of nearly every portion of the State. The success of riparianism means a retrograde step in our prosperity and discouragement to the principal industries and pursuits of the State. Thousands of people from the East are turning their eyes and thoughts to this fruit eldorado, and when they come they must find righteous and beneficent laws to assist them in building up their future homes.

The address from the Executive Committee of the Irrigation Convention is timely and right to the point. Prompt, determined and decisive action is needed. The people must organize at once, irrespective of party, so as to demand the nomination of men for the coming Legislature who are known to be in accord with the interests of the people on this question. Let the different political parties know all over the State that to secure support they must nominate only such men as will command the support of the irrigationists. The people should demand of all candidates coming before them for their suffrage, that there should be embodied in the written laws of the State the inalienable and sovereign right of the people of the State to use, for agricultural and horticultural purposes, the waters of our streams and rivers, and that any attempt to keep such water from its legitimate use of cheering the thirsty soil, should be severely punished. Every section of the State should proceed to organize at once to carry on the good work and see that the right men are sent to represent them, and require such men to give pledges that they will make irrigation their first concern; that they will not allow the irrigation bills before the next Legislature to be set aside and delayed by other measures; that they will stand by them firm as a rock till they become laws. With such action on the part of the people they cannot help but succeed.

The Placer Republican.

Irrigation.

The people of the valleys, and of Southern California in particular, have begun the usual agitation of the irrigation problem. The subject is equally interesting here and almost as vital to our interests as it is to those of any other section. The State Committee having in charge what is called the Fresno plan, has issued an address to the friends of irrigation and called a convention to meet in San Francisco on the 20th of May. It should not be understood that the words, "Fresno plan," are applied to a system peculiarly adapted to advancing the interests of Fresno alone. They are used because an important convention to consider the subject happened to be held at that place in November, 1884. It might with more justice be called the common sense plan, because the material interests of the State depend largely on adopting the principles there declared as opposed to the doctrine of riparian rights.

The principle contended for by the irrigationists may be briefly stated to be, that all water shall be utilized for the good of the greatest possible number, instead of being allowed to flow uselessly to the sea at the whim of those who own the land along its channels. According to our present law the common law of England is the rule of the decision in all the Courts of the State. In England riparian rights are as sacred as the throne; but the law of England was made for England, a land of landlords and boundless estates, where the necessities of irrigation beyond what can be accomplished with a watering-pot are unknown. We can leave to lawyers the task of discoursing on the desirability of conforming to the English law in general, but to make the English system of water rights the rule in a climate like this is not common sense. It would show better judgment to adopt the "common law" of Asia. It would indicate more common sense to follow the usage of the Spanish colonies, which made the use of water a public use. Our own Constitution declares that "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." To adopt the English rule in the face of this provision seems like the extreme of absurdity. There can be no such thing as ownership of running water. It is on one man's land one minute and on another's the next. It is the means given by nature to reclaim thousands of acres of otherwise barren land. The right to use it should not be confined to a few, nor should a few have it in their power to say that it shall run to waste unused.

It is said that the plans of the irrigationists will destroy the internal navigation of the State. Few believe that, but if it does, the latter interest will bear no comparison with the good that will result from wise irrigation laws. A very small percentage indeed of the produce of the State goes to market by water. People do not travel much by water, and the importance of navigation on three hundred miles of the Sacramento and San Joaquin rivers is as

nothing compared with the prosperity of all the valleys, plains and foothills from Shasta to Lower California.

The irrigationists propose to carry this contest into the campaign this fall regardless of party, and candidates for office will have to trim their sails to navigate this dry land question. We hope to see the irrigationists win.

Modesto Herald.

The Irrigation Question.

Eventually California will be irrigated from the north end of the Sacramento valley to the extreme southern part of San Diego. There need be no fears as to that. The demand for just such products as require irrigation will compel this work. During the past three months over 100,000 people from the Eastern States have visited California with the intention of buying homes and engaging in the culture of fruits, raisins and wines. They have become convinced that there is a market for all that California can produce, and they come well informed on the subject. They have in view the culture of the orange and lemon as well. They have witnessed the enthusiasm with which California fruits of all kinds have been received in the Eastern cities, and particularly California wines, which they consider more pure and wholesome than any foreign product that finds its way to our shores. They have not large fortunes to spend for small farms, but they have the enterprise and the muscle to carry them forward to success. The cut rates in railroad fares and freights have been a god-send to California. More people are in San Francisco to-day, and have been each day for the past month, than were present during the conclave. Hundreds are turned away from the prominent hotels every evening, and every lodging house in the city is full. These are not tramps and adventurers. They are men of enterprise and means who have a desire to locate in this State, and now is the opportunity for this State to secure an increased population of hardy husbandmen. That is the character of the people who are coming to-day.

Kern County Californian.

A Misapprehension.

We observe that there are some papers in the State that, while disposed to be friendly to the cause of irrigation, misapprehend the meaning of the doctrine or law of appropriation. They take it to mean that whoever diverts water from a stream becomes the owner of that water, to do with it as he pleases, thus having it in his power, by running it to waste, to bring about as much injury as an end man, provided the opposite, or riparian doctrine is confirmed and made the law of the State. But nothing is further from the fact. The appropriator is entitled to the water he diverts, so long only as he applies it to a beneficial use. For example, after he has irrigated his crop, he no longer has right to the water. It then becomes common property

until he again requires it for that purpose. It must be returned to the channel to be taken up by the ditches and canals of other appropriators, to be used in like manner. This is the law of all countries where irrigation is recognized, encouraged and protected by law, and the preferred use of water is for that purpose. For this reason, in all such countries, streams used for irrigation are under police control—under an authority that promptly and arbitrarily decides all questions respecting diversions from them; complaints of waste and misuse of the precious fluid being those which most frequently come under such cognizance. To establish this necessary police control in all the irrigated districts of the State, and especially to prevent appropriators from continuing control over their diversions of water after they had ceased to need it, and waste it as they would then necessarily do, was the purpose of one of the bills before the Legislature at the late session. It expressly provided that no appropriator could take any more water, or for a longer time, than his needs required. Its purpose was to provide for the economical use of water, and to extend its benefits to the greatest number possible. To this end, and to carry out other purposes that long experience had proved essential—all looking to the economical use of water and diverting it to the greatest good of the greatest number, and reducing the cost of conveyance to the minimum, the bill proposed to create certain officers to hear all complaints relating to water, redress wrongs, and work generally for the interests of those within the irrigating system they controlled, according to forms and processes prescribed.

Daily Examiner.

Irrigation and the Law.

In the economy of modern civilization, under democratic representative governments, all popular and political "movements," so called, are simply efforts of the people to bring the law into harmony with their rights and interests. It is difficult to change the laws. They are crystallizations, so to speak, of past customs and opinions, and are often thickly incrustated with prejudices and fortified with established interests that antagonize the just demands of the masses. Hence it is that it frequently happens, even in the most free countries, that the changes in the law demanded by the people can only be effected by popular uprisings that would amount to revolutions under monarchical and less pliant forms of government.

This idea finds an apt illustration in the contention now going on in our State over the question of water for irrigation. The masses of the people understand clearly that their future material prosperity depends in an eminent degree upon the establishment and maintenance of a thorough system of irrigation for the arid plains which stretch for hundreds of miles along the great valley of California. Much the greater part of the arable land of the State is not sufficiently watered by the annual rainfall and the riparian acreage is a small fraction of the whole. And yet many millions of acres of land in the

vast basin, which are naturally too arid for vegetation, are susceptible of the highest cultivation when irrigated. This is known, as we say, to the people. And they know, too, that it is the universal custom, and, therefore, the common law of all dry countries, that the water in running streams is public property and subject to appropriation and diversion for the necessary purpose of irrigation.

The first immigrants who came to California from the States beyond the mountains found such customary law among the few Spanish-Mexican inhabitants of mission lands and grants. The Americans adapted themselves to the physical condition of the country and to the laws and customs in that regard imposed thereby. Hundreds of thousands of fortune-hunters came. Gold mines first attracted them, but these becoming rapidly exhausted, they turned their attention to the soil, so rich and productive. The marvellous growth of the new State proceeded, and visions of imperial greatness began to arise in the imaginations of the people.

But being Americans of English origin, we brought with our language and with our grand principles of liberty and justice, the body of the common law of England. By statutory enactment we made this the rule of decision in our Courts, except where changed or modified by the Constitution and laws of the United States and of the State. And now we are told by a few lawyers, speaking for a few clients who own the banks of some of the streams, that it is unlawful to divert water from running streams for the purpose of irrigating the land. Such was the law of England—of humid, saturated, fog enshrouded England—and is therefore the law of California.

Neither space nor patience will permit our discussing the proposition. It rather merits denunciation and derision. And indeed the irrigation movement now rapidly progressing throughout this State is too likely to partake of these characteristics.

There is no doubt whatever of the result of this movement. It will effectively bring the laws of California, in respect of water rights, into full harmony with the rights and interests of the people. Hereafter it will be entirely lawful, as well as absolutely necessary, to irrigate.

Kern County Californian.

The Supreme Court and Irrigation.

The decision of the Supreme Court of California in the now celebrated irrigation case, cannot be too often noticed. Not that the people are particularly interested in the parties to the suit, nor in the decision, so far as it merely relates to the immediate litigants. The plaintiffs are swamp land proprietors and cattle kings, and the defendants are extensive ranchers and canal owners. The public care nothing about their individual interests and quarrels. But when the highest judicial tribunal in the State, in assuming to settle a private controversy, takes the occasion to announce a rule of law for other cases—a rule of public law, which is calculated, in its far-reaching

effects, to destroy half the wealth of the State and to throttle the agricultural interests of the people, then the individual interests of the parties to the suit sink into insignificance and the power of the Court for evil becomes a matter of public concern.

Until the decision in this water case was rendered, the great mass of the people of California had never doubted that the water which flows down from our mountain ranges into the great valleys, mostly in non-navigable streams, might be diverted and appropriated for irrigation. This had been done in all arid and comparatively rainless countries throughout the whole world from the earliest ages. Several hundred millions of the population of the world have subsisted for time, whereof the memory of man runneth not to the contrary, upon products raised upon irrigated land. American pioneers came to California. They came from the saturated valleys and dripping hillsides of the East. They found a great arid and seemingly desert region. But they soon discovered that the great valley of California could sustain a population of fifteen or twenty million souls if the soil could be watered and the luxuriant vegetation started. They began to irrigate, as other people had done in other arid lands. Witness the marvellous results! Immense grain fields, extensive vineyards, innumerable orchards, thousands of lovely and happy homes, where but yesterday the grassless plains knew only the cayote and the prairie dog.

But suddenly, and entirely unexpectedly, comes the announcement from the highest Court of the State that all this is against the law! The water must not be taken from the beds of the streams; it must be allowed to "flow unvexed to the sea" (swamp), because, forsooth, the common law of England is the rule of decision in our courts, and, according to the common law of England, every owner of any portion of the banks of a stream had the right to have all the water flow past him.

It is not our purpose, now, to argue against the absurdity of this conclusion. Perhaps it would be better to say against the wrongness of this conclusion. It is enough to say that it is wrong, because it will work immeasurable injury to the State and incalculable injustice to the people.

It is not necessary that we should assert nor that any one should suppose that the Judges of our Supreme Court were actuated or controlled by any but the purest motives. We concede that they are above reproach. They have simply blundered, perhaps. In that case, since the question is one of public concern, let the representatives of the people correct the blunder. Or it may be that the fault is with the letter of the law, although frankly, we think not. If that is so, change the law. Law must serve the public good and not injustice; it is not to destroy but to subserve and conserve.

The remedy is with the people. In the end they have the power to make all law, whether it be legislation proper or Judge made. The general election is approaching. A new Legislature is to be chosen. Other Judges are to be elected. Let the people speak their will.

While there can be no question as to the propriety of early action, we find contrary to what we feared, that there is, likewise, no word of disapproval of

their course in calling the next meeting of the convention at San Francisco, instead of at one of the large towns or cities of the southern part of the State. The press and people have been more quick to see than we imagined they could be that San Francisco, as the metropolis, and because of its relation to the great central valleys, the development of which will give the local population, it must have to become one of the great leading cities of the world, like New York or London, is more deeply interested in wiping out all suspicion of riparian law from our legal system and the enactment of proper irrigation legislation than any part of the State. From that point all work in this direction should receive its main impetus and come as from some great controlling center. With irrigation protected and promoted in this State, as it is in every other part of the earth where the same climatic conditions prevail, the great interior valleys, that convey toward San Francisco in our narrow commercial channel would have a prosperous population of ten or twelve millions of people, within a period short even in relation to a lifetime, and the city be sustained by the largest contiguous population and resources of any in the world. No city ever became great through the possession alone of a fine harbor and an extensive trade in transit. In addition to this, it must be the trade, financial and manufacturing center of a large population. San Francisco has been slow to realize this; but it has done so at last. The press of that city are now the most earnest champions of the irrigation interests, and from its merchants, business men, property owners and capitalists will come the most strenuous representations in favor of necessary legislation to the next Legislature.

Accordingly the committee have established their headquarters at San Francisco, in the Merchants' Exchange, and from that point will labor strenuously to enlighten and influence public opinion in every part of the State in relation to the great work they have in hand—of such vital importance to San Francisco and the entire State. The opposition they have to contend with is the most contemptible and unworthy, considered in itself, that could be imagined. As far as it showed itself at the late session of the Legislature, it consisted only of five or six cattle men—former opponents of the no fence law—and owners of swamp lands at the ends, or sinks of the streams of the Tulare valley, to which they obtained title because the water was taken away and they were made dry. But these men are powerful because of their wealth, their close alliances and the harmony with which they work together. In these days, the justice of a cause, while a powerful support, is by no means sure of sustaining itself against corrupt influences. These men without a wrong to complain of—in face of a proposed provision of law to pay them for the infringement of any right or loss they might sustain through the use of the water of the streams aforesaid for irrigation—were yet able to make a winning fight, taking their stand on the allegation that such and such was law, that being so, it must stand superior to the interests of civilization and to the welfare of the State, and that the interests of several hundreds of thousands of people were of no moment if they collided with any alleged lawful right of theirs. But as was exemplified in the case of the no fence

law, against which these men, or those they represent, long waged a successful contest, the committee believe that right and justice will prevail in the end. They, or men equally persistent and determined, will continue the fight until the resources of their opponents are exhausted—until, if necessary, their swamp lands represent to them values equal to lots along the great business thoroughfares of London.

Oakland Morning Times.

The irrigation problem is being unravelled in such a way that the next legislature cannot fail to consider it favorably. The whole country is waking up to the fact that we must have our river water properly distributed in the large valleys or give the land up to cattle ranchers, who will forever keep it in a desert state with but a few shanties here and there. The only objection that has been made to the irrigation scheme so far, is that it will injure our navigable streams. This is simply bosh, for the reason that the water will soon be returned to its channel. It is a well-known fact among irrigators, that after a few years the land irrigated becomes so saturated that but a very little water is needed, and the ditches have to be used only once or twice during the year. Around Fresno the land for miles back from the ditches is so saturated that one good flooding at the proper time will guarantee a fine crop, whereas when the ditches were first brought into the valley they had to keep them full all summer. The riparian rights' men will spring all kinds of traps for the unthinking lawmakers between now and the next session; hence the friends of prosperity will have to be wide awake all the time, and work like beavers until their bill passes both houses and is signed by the Governor.

Kern County Californian.

The Irrigation Issue.

A considerable part of our space last week was devoted to the work of the Executive Committee of the State Irrigation Convention, which convened at Fresno on the 5th inst. They have not only outlined a vigorous course of action, but have taken the field early. One of the mistakes of the Irrigation Convention was, that its last session at Fresno did not take place early enough, and when it adjourned the Executive Committee appointed by it to carry into effect its views had less than three weeks to prepare before the session of the Legislature commenced. Their bills should have been the first presented in both Houses, as they doubtless would have been if the committee had been given three months for preliminary preparation instead of the totally inadequate period that remained to them between the adjournment of the convention and the meeting of the Legislature. As it was, notwithstanding the unavoidable delay in the preparation of the bills, their imperfections consequent upon hasty work, the deadlock and the mistakes made because of the impossibility of due deliberation on all the steps that

were taken, they came very near to the successful accomplishment of all they had in charge to do. Their bills passed the Assembly by majorities of more than two-thirds, and would have passed the Senate by large majorities except for the obstructive tactics of a few Senators who considered themselves attorneys for the five or six *end men* of the streams of the Tulare Valley, and as such, forgetting that they had duties to perform as legislators, devoted all their time, ingenuity and pettifogging skill to the work. The committee will render an account of their stewardship to the State Convention which, pursuant to their powers, they have called together in San Francisco on the 20th proximo, and whether they are continued in place or their successors appointed, time at least for the accomplishment of what the irrigation interests of the State require will not be wanting—time, the want of which was so disastrously felt before.

The Contra Costa Argus.

The Irrigation Question.

At a meeting of the Legislative Committee of the State Anti-Riparian Irrigation Association, held at Fresno on Monday, it was resolved to hold a convention at San Francisco on Thursday, May 20th, for the purpose of effecting a permanent central organization for the purpose of formulating plans to perfect the irrigation laws at the next session of the Legislature, and also to lay plans for action during the coming campaign. This question will enter largely into party councils, and will cause no little discussion. We have received a supply of documents from the committee, and shall refer to the question occasionally.

Daily Alta California.

Th absurdity of attempting to apply the modern English doctrine of "riparian rights," in its full extent, to the streams, and alleged streams, of California has often been pointed out. In England it is quite possible for every stream to be utilized to the utmost without having its natural flow substantially impeded or diminished from its source to the sea. Aside from domestic use, and from the fertility imparted by the stream to the adjacent land, the principal private benefit to be derived from a water-course there, is that it is a source of power for mechanical purposes. It is right enough, too, that this benefit should be appropriated wholly to the use of those through whose lands the stream runs. If it were diverted from its natural channel it could not, ordinarily, be devoted to a more extended or beneficial use. Irrigation by artificial methods is not, in that country, a necessity or even a benefit. The streams are so plentiful and the atmosphere so humid, that it is impossible for any tract of land to be deprived of necessary moisture; in fact there is everywhere a surplus of moisture. Hence the doctrine that every owner of land upon a water-course is entitled to have the water flow in its natural

channel through or past his land without substantial hindrance or diminution is there manifestly, just and appropriate, and injures no one.

But in California it is far otherwise. Here the rule is that the streams are more useful when diverted than when confined to their natural channels. Irrigation is here one of the principal and most important uses of a water-course. There are vast tracts of land lying at a distance from any natural streams which, by artificial irrigation, may be converted into vineyards, groves and gardens of surpassing richness and bewildering bloom, but which, without such aid, must remain mere arid wastes. Besides this, many of the streams, while confined to the tracts through which they run, if they may be said to run at all, so sink beneath the surface of the ground or run so far below the surface of the adjacent ground, that even the riparian owners cannot use them for irrigation and restore them to their channels before leaving their own lands. If the modern English common law is to prevail here, therefore, the value of these streams can never be realized, and large areas of the most valuable lands in the State must remain uncultivated.

There is no rule or reason, nor, as we think, of law, which is said to be "the perfection of reason," justifying the application to such a condition of things as we have here of the churlish doctrine that the owner of land bordering upon a stream may, without employing its waters for any useful purpose himself, insist upon keeping them in their channel, while his neighbor's thirsty fields parch and blister in the sun, and are condemned to hopeless sterility. The obviously just and reasonable rule with respect to property in water to be applied here is the rule already sanctioned by the immemorial practice of our people, by numerous judicial decisions both of the Supreme Court of the United States and by the Supreme Court of this State, and by express statute law, the distinctively California rule of "priority of appropriation." The rightful owner of the water of a stream, where streams are so few, and those who need to use them are so many, is in natural justice he who by his energy and enterprise first appropriates it to some beneficial purpose, to the extent that he does so appropriate it. Water has been described as a "wandering thing," and therefore, like the air, incapable of ownership apart from the soil upon which it rests or runs, but certainly if there can be any property in it, he should be deemed its owner who first captures the wanderer and tames it to be his servant. There is no more reason why the owner of land over which a stream runs should own the stream, without making any use of it, so as to prevent another from appropriating it before it reaches his land, than there is why he should own the wild animals that roam through his forests or the free birds that perch upon their branches.

There is no hardship in this rule of prior appropriation. It leaves the riparian owner every reasonable right and privilege. He may make the water in the stream coursing through his land his own by using it; and he has a better opportunity than any one else to make the appropriation, because the water is already on his land. He has but to stoop and take it. Any competitor with him for its use is compelled to turn it into a channel and carry it

many miles, perhaps, to reach the land, at an expenditure of much time, labor and money. The riparian owner, therefore, has, by his position upon the stream, every advantage over his neighbors which he can justly claim, and if he suffers himself to be outstripped in the race for priority, it can only be by his own want of diligence and enterprise. If he sits and dreams upon his bank until another has appropriated the water he has only himself to blame.

The inapplicability of the English doctrine to most of the so-called water-courses in California, and the justice of the rule of prior appropriation as respects them, are further manifest when we come to consider that they are not in fact watercourses at all, with "bed, banks and water," as required by the definitions in the books. The water confines itself for a short distance only to some semblance of a defined channel, and as soon as it leaves the mountains and reaches the plains, it spreads itself out over the land into a mere marsh, standing here and there in sluggish, brackish pools, unfit for any use, or loses itself entirely in the porous soil, to reappear at some distant point, with nothing to mark its course between. It has a general slow tendency seaward, which can scarcely be dignified with the name of "current." Indeed, it has none of the characteristics of those well-defined streams to which the English doctrine was meant to be applied. These pretended watercourses in California are utterly incapable of any beneficial use, except to nourish a few coarse marsh grasses until they have been gathered into defined channels and distributed to points where they are needed by the labor of man. They become useful by artificial means, and justice demands that he who, by his money and labor, makes them beneficial, should own their waters.

It is a notable and significant fact that most of the stoutest champions of riparian rights in California are claimants under the Swamp Land Act. This is notably so in Fresno, Tulare and Kern counties. These people bought their lands as mere swamps; but now they claim them to be watercourses, and that they are riparian owners. They undertook, when they purchased, as a part of the consideration of the purchase, to drain their lands of their sluggish, miasma-breeding waters; but now they claim that they have a right to keep them forever as they are, and not only not to drain them themselves, but to prevent others from doing so. That this is a breach of faith which ought not to be tolerated by the people of California goes without saying. The purpose of the swamp land legislation of the Federal and State Governments was a wise and beneficent one. If that purpose were faithfully carried out, it would add immensely to the productive area of California soil. It would convert these pestilential bog-pastures into fruitful fields. And, besides, the collection of these stagnant waters in ditches and canals would furnish the means of irrigating countless acres of desert lands and of making them valuable. It may be true that the owners of these bogs find it more profitable not to drain them, but it was not for *their* profit that drainage was required. In selling the lands to them, it was not left to their option to drain them or not. They bound themselves by their contracts to drain them, and

the good of the whole State requires that they should fulfill their contract. At all events, they have no right to object to others draining their swamps for them for the purpose of using the water upon other lands. The ludicrous pretense of riparian ownership by these swamp land purchasers, who have thus deliberately broken the contracts under which they purchased, ought not to be permitted to stand in the way of the prosperity of the State. We need the lands which are left to lie waste by the surly greed of these purchasers, for homes for the new population now flocking to the State, and in order to irrigate those lands and bring them into cultivation, we must have the surplus water which now goes to fill these swamps, whether the bog-owners like it or not.

Oakland Morning Times.

The irrigation boom is getting under headway once more. The officers of the last Irrigation Convention will meet in a few days at Fresno, and a call will be issued for a convention to take place very soon. They will probably decide on meeting in Oakland, as one of the head men was in this city a few days ago, and seemed to be anxious to have the Appropriators come here. If the gentlemen wish to educate the prospective law makers of this part of the State, we don't know of a better place for them to meet than in Oakland. It is near the centre of the State, and besides, the people of Oakland and San Francisco are very anxious to be enlightened on the question of irrigating the San Joaquin valley. Let us have the convention here by all means. We will guarantee to make it the biggest success of the kind ever held in California.

Kern County Californian.

Navigation and Riparianism.

The riparian poll-parrot at Sacramento is screaming to save the navigation of the Sacramento river, falsely asserting that unless the riparian law is sustained, river navigation will be destroyed.

The navigability of the rivers is protected by a different principle of law. Riparian rights have not the remotest relation to navigation. Navigable rivers are public highways of commerce, the obstruction of which is a public nuisance. A riparian owner has no higher right than any individual of the community in maintaining navigable waters.

Oakland Morning Times.

Every Man.

The Secretary of State Bayard says that the growth and exports of wheat from India during the past few years has been wonderful, and he anticipates great damage to the industry in this country from that quarter. This is no

more than what the people of California might have expected since it was learned that two crops of wheat can be raised yearly in India, and the yield per acre is about three times greater than it is here, and the cost of seeding and harvesting fully a half less. If this be true, and we have no reason to doubt its truthfulness, for Mr. Bayard can be relied upon on such matters, then it is high time for the people of the United States, and California especially, to cast about them for some other use to put their land to. Ever since California was settled, a majority of its people have held to the belief that our rich valley lands cannot be used for anything except the production of cereals. They have fallen into this way of thinking on account of the scarcity of water and the uncertainty of the rainy season. We can very distinctly remember the time when it was firmly believed that the great San Joaquin valley would not even produce grain, but it is a well-known fact now, that almost anything will grow on the once arid plains, if an abundance of water is furnished. Under such circumstances we are in a condition to let India raise as much wheat as she pleases, and we will furnish the world with fruit and wines. There is "no money" in the production of cereals, and there never will be again, so we must turn our attention to a more pleasant and profitable business. We have the only country in the world that will yield fruits of all kinds at all seasons of the year, and with such great advantages on our side there is no reason why we should not furnish the entire globe with fruits and wines that never could have been produced except in the Garden of Eden. But before this state of affairs is brought about we must settle the irrigation question. There must be a plenty of water and that water must come from the numerous waterways of our great valleys, in spite of the big cattle kings. We cannot depend on wheat in the future, therefore we must have irrigation and fruit, and it is the duty of every man in the State who is not a cattle king to join the appropriators and see that the next Legislature does its duty in this matter.

Oakland Enquirer.

The Irrigation Question.

For many years past the irrigators of the State, men who have capital invested in land and water-rights, have been striving to get recognition before the Legislature. They want to have the irrigation interest placed on such a permanent basis that those who buy irrigated or irrigable land may do so with the assurance that their rights to water are as fixed and tangible as their title to the land. Owners of dry land, not yet irrigated, do not want to undertake large investments in the line of irrigation canals, until the question of riparianism is settled. They do not wish to risk confiscation until they are sure that it is out of the power of any one to ruin them by shutting off their water supply. Irrigators who have their money already invested, who have planted orchards and vineyards, and have built up prosperous homes, surrounded by verdant meadows, and embowered in roses and vines, in the

midst of arid deserts, through the agency of water, are even more deeply interested in having a code of laws which will guarantee them the perpetual enjoyment of the wealth they have created. They want laws which will protect them from mutual encroachment, whose administration will give to each appropriator the quantity to which he is entitled by proscriptive right, and which will prevent strife, or worse, in the division of the supply among the consumers.

In all previous efforts of attaining such legislation, the representatives of San Francisco and Oakland, with the exception of Senator Whitney, and one or two others perhaps, have taken no very active interest. To them it has seemed to be a fight which did not greatly concern their constituents, and they have either held aloof or given it lukewarm encouragement, if not positively opposed to the measures proposed. They have not risen to an appreciation of the fact that they are as deeply interested as any one else. They do not see that if all the waters that now flow to the sea, through our great unutilized valleys, were spread upon the lands, our State would support several millions of people in addition to its present population, and that San Francisco and Oakland would increase in business, in wealth, and in population, in a proportionate degree to the general growth of the State. But the earnestness and persistence of the advocates of irrigation is beginning to have its effect, and there is evidence that the merchants and property-holders of our two great seaboard cities are awakening to the situation. The coming convention, to be held in San Francisco, May 20th, should arouse their interest. They will learn from the men who will be present, and who understand the situation, the story of their grievances, the trials and the perils of the irrigators, and they will then see in a clear light one of the causes of the slow growth of our State, and why Kansas, Nebraska, Dakota, Minnesota, and other Western States and Territories, with soils less fertile, and climate bleak and severe, have so far outstripped our beautiful land in population and agricultural developments. The explanation is simple. Our valleys need irrigation to produce the varied crops required to support dense populations, and we are allowing the wealth of the land to flow by to the sea unused, because timid capital fears to invest in the necessary works without protective legislation. We must start with the square principle, embodied in our constitution, if need be, that the waters of our streams belong to the State, and are to be utilized, and that every encouragement must be given through beneficent laws for their utilization.

Livermore Valley Review.

The Irrigation Question.

The address of the Executive Committee of the Fresno Irrigation Convention, recently published, appears to have met universal approval throughout the State. And the action of the Committee in calling a mass convention to meet in San Francisco in May, has also been generally commended. If we

can judge from the tone of the newspapers, both city and country, the vital subject of water rights discussed by the Committee and to be considered by the convention next month is attracting merited attention in every direction. And this is well. There is no more important question before the people of California. Just now we have been having in most parts of the State copious rains. But with the experience of forty years we know that this grateful downpour is exceptional. Next year and perhaps for several years to come, the soil of the great valleys will be parched and too arid for cultivation unless an artificial supply of water is afforded. The vast grain fields and extensive vineyards and orchards in the end depend, and must ever depend, upon irrigation. It is the essential requirement of the physical conditions of the great valley of California.

It is only surprising that there should be any question at all, in this State, about the propriety, the necessity and the legality of diverting water from the running streams for the purpose of irrigating and fructifying the richly productive lands which, when watered, so willingly bloom and bear fruits beneath our sunny skies. In all other lands so situated, lands which support hundreds of millions of the human race, the waters of heaven are dedicated by custom and by law to general use. Here only, of all the arid countries, the claim is set up that the waters in running streams belong to the riparian proprietors—the owners of the banks. And our highest court has so decided, basing its conclusion upon the fact that the common law of England has been made the rule of decision in California and that in England such is the law.

The irrigation question or issue, now before the people of California, can be stated very briefly: A few riparian owners claim a monopoly of the water which descends to and traverses the great valleys and which is absolutely necessary for irrigation. The people contend that this water is public property and subject to be diverted and used for the general good under proper governmental regulations. The monopolists say that the law, as held by the Court, favors their pretensions. The people say that the laws were not intended to destroy but to conserve and that if the letter of the law can be so construed as to ruin the agriculture of the State it must be changed and made so clear that in the future there can be no question of the right to divert water for irrigation.

The Pleasanton Star.

Importance of Irrigation.

The irrigation problem which is now exciting and receiving so much attention is of vital importance to the State. And not only to the agricultural districts, whose aridity of the land renders an artificial supply of water absolutely necessary, but also to the two great cities on the bay. San Francisco and Oakland are dependents for their prosperity upon the tributary country which lies in the immense valley between the Sierras and the Coast Range. This valley of California, comprising more than fifty million acres of land, in

its climatic and physical characteristics and in its capacity for luxuriant and varied productiveness, is entirely unlike any other portion of the United States beyond the Rocky Mountains, and as different from England, whence our laws and civilization came, as are the steppes of Asia. The soil in this vast basin, when fructified by sufficient moisture, is as productive as any on earth. The cereals, vines, fruits, all the products of the temperate zone and many of the semi-tropics thrive. Could the arable land in this valley be brought under cultivation, it would sustain a population of from ten to fifteen millions. And if this were done; if this population could be secured by immigration of those of our own race, what mighty cities would be built and sustained on the bay whose Golden Gate invites the commerce of the world.

The future of California in this regard turns upon the question of a sufficient supply of water for land. The annual fall of rain is not sufficient in many and most parts to enable it to be cultivated. Over large regions the yearly precipitation does not exceed on an average four or five inches. Hence we say an artificial water supply is absolutely necessary to agriculture.

In this respect the country is not particularly peculiar. It differs strikingly as we have said, from the Atlantic States and from England, but in many other parts of the world dense populations subsist upon arid lands in comparatively rainless regions. But the experience of man from the earliest ages taught him to utilize water found in natural reservoirs and running streams and so to irrigate the dry soil as to produce luxuriant vegetables. And in all such countries the right to take water from the streams for irrigation was, in the nature of things, recognized and enforced as the customary law of the land.

And such everybody supposed to be the law of this arid region until a few riparian owners along the streams which descend from the surrounding mountains and traverse the valley set up a claim of ownership to the running waters. And then the highest court of the State suddenly announces that the existing laws warrant and sustain the claims of such riparian proprietors.

Space will not here permit our discussing these remarkable pretensions nor the extraordinary decision upholding them.

Whatever the law may be or may have been, it is certain that the people of California are now aroused to the necessity of enacting such laws, and of obtaining Judges who will enforce them, that the lands which produce our wealth and which are the source of our prosperity shall not be made a desert for want of the water which belongs to the soil.

This is the signification of the irrigation movement.

Berkeley Advocate.

Water is Wealth for All.

There is no subject receiving more attention throughout the State, at this time, than the irrigation question. Our country contemporaries are discussing it in all its phases, especially since the recent call for an Irrigation Con-

vention to meet in San Francisco in May. And we learn that the suggestions and advice of the Committee of the Fresno Convention, in respect to organization, are being carried out, especially in the southern counties, and that "Anti-Riparian Irrigation Clubs" are being rapidly formed. These clubs will, it is understood, send delegates to the May convention.

It is not at all surprising that this matter should receive so much attention and consideration. California is essentially an agricultural State, at least agriculture, including wine making and fruit growing, is the basis of our prosperity and wealth. Merchandizing and manufacturing are, for the present, and will be for a long time to come, subsidiary pursuits. Even our mining interests are of small importance when compared to the value of the products of our soil. And when we take into consideration the fact that the great valleys which are already producing so much, and which are capable of sustaining a population of many millions of people, are naturally arid and comparatively rainless, and that without an artificial supply of water from irrigation the land must remain in a desert state, the almost paramount importance of this movement is seen.

It seems incredible that any one should have the temerity to oppose the proposition that the waters of our running streams should be taken to irrigate the most productive soil, in the most genial clime, beneath the fairest skies on earth. And yet so it is that as a legal proposition, as a matter of public economy, it is an open question whether water may be diverted from the streams. It is this question which the people have now taken up and which they will speedily settle in favor of irrigation and prosperity.

Let it not be forgotten that the merchants and manufacturers of San Francisco and of Oakland are also vitally interested in this contention. Indeed property holders of all classes in those cities; and persons engaged in catering to the luxuries and amusements of the people of the State are interested in the question. As already said, agriculture, wine making and fruit growing are the basis of the wealth of California. The cities depend upon the country for their prosperity. Whatever enhances the agricultural interest increases the riches of the centers of population. Whatever injures our farmers, vineyardists and fruit growers, hurts the cities.

It is to be hoped that San Francisco and Oakland, as well as our inland towns and cities, will send able and intelligent delegates to the Convention, which will assemble May 20th. Let the whole subject be there discussed in all its aspects and bearings, and let a plan be formulated and submitted to the people for settling the right of irrigation beyond all future question or cavil. If this is done by a body of representative delegates the plan will be carried out.

Oakland Sentinel.

Irrigation.

No more important question has ever come before the people of California than that which relates to the irrigation of arid and so-called desert land. These lands, which lie in the great valleys, comprise a large portion of the

State. They are susceptible of the highest condition of cultivation and, with water, are perhaps the most productive on the continent. The question is, shall they have such necessary water?

The fact that the running streams and reservoirs in the mountains are capable of supplying this essential requirement of agriculture, if properly distributed, is unquestionable. But there is an impediment, constructive or real, to the utilization of this water. A few of the proprietors of lands bordering on the streams claim that under the English common law doctrine of riparian rights, which they say has been recognized by our Supreme Court, they have the exclusive use of the water, and that it cannot be diverted from its natural channel for any purpose whatever.

It is not claimed that the riparian proprietors can have any use for this natural outflow from the mountains. Indeed, their right to use water flowing by their banks, in any way that will reduce the volume, is denied under the authority of the same common law doctrine. It must simply pass through their lands on its way to the sea, to be lost in the waste of waters, or to be swallowed up in the tule swamps. Meanwhile the desert lands, so prolific under the influence of irrigation, are dedicated or relegated to sterility.

Shall such conditions as these continue to exist? Will the Legislature refuse to annul the application of the common law by a declaratory statute, and give the thirsting land its imperative need and to California a widely increasing development and prolific production? Will it condemn the great valleys to barrenness? This is the issue, without exaggeration and without coloring.

Haywards Journal.

Irrigation is Wealth.

It is a mistake to suppose that the subject of irrigation is of interest to none but irrigators. The encouragement of irrigation is the duty of every one in the State. Every farmer, every wheat-grower, every merchant or manufacturer, wants a market for his products or his goods. Business experience teaches that home consumers are most profitable to the producer. Every mile of transportation increases in some degree the cost to the consumer and lessens the profit to the producer. The wheat-growers of California are today competing under great disadvantages with foreign producers in foreign markets to supply the dense population of Europe. With a million or ten millions of people on the San Joaquin Valley, a market for home consumption would be created in which we could defy foreign competition. But we must fill that valley with consumers who will also be producers. Stanislaus estimates that it contains elements sufficient for the support of from ten to fifteen millions of people. These elements are a dry but fertile soil and living streams of water. The natural dryness of climate and the limited rainfall make irrigation necessary. The custom of settlers has heretofore been to select the more easily cultivated lands, generally at a distance from the rivers, and after constructing ditches or canals, to divert the waters for

irrigation. The custom long since developed into unwritten law, whereby he that would divert water for a beneficial use became entitled to it as of right, and the first in time was first in right. The foundations of this law have been lately shaken by a judicial earthquake, and no longer rest secure. The ghost of the long departed doctrine of riparian rights now walks the night. Under this doctrine the rivers cannot be molested and water cannot be appropriated. It is to lay this ghost that the irrigators have called a State Convention, and are organizing into a political unity. Their platform is their right of the free appropriation of water for irrigation and down with riparianism. Success to them is wealth to us. We should lend them a hand.

Alameda Semi-Weekly Argus.

Prosperity or Decay.

The water controversy in this State, between the irrigationists and riparianists, involves the question of general prosperity on the one hand or general ruin and decay on the other. It is a contest for the privilege of developing the immense resources of California on the one side, or maintaining the desolations of the desert for all time to come and permitting the most highly cultivated portions of the State, the rich and prolific farms, the splendid orchards, the wide and profitable vineyards, to die and of thirst and lapse into barrenness.

And strange as it may seem, this alternative is maintained by the riparian proprietors of the State. They assert their right to the exclusive use of the water in the running streams and deny the right to divert any portion of it for irrigation. For this is the logical conclusion from the contention that the English common law doctrine of riparian rights obtains in this state. Like Shylock they stand by their bond and claim their pound of flesh. They say that the law gives them the exclusive use of the water and that it is nothing to them if the rest of the State perishes for want of it. This is not only the acme of selfishness, but a monstrous crime against society. It is a conspiracy against the prosperity of the commonwealth, and the men who advocate it are public enemies.

These are the general considerations which have led to the extraordinary movement whose progress will be marked by the Irrigation Convention which will convene in San Francisco in May. The last Legislature met and adjourned without granting relief. The judicial sword of Democles still hangs over the prosperity of the State, and now the masses of the people propose to take the matter into their own hands. They have the power to grant themselves relief and they are going to do it.

Brooklyn (Alameda Co.) Eagle.

Irrigation in Politics.

A new political force has sprung to life, full grown, armed and equipped. The call for a State Irrigation Convention makes a political era too important to pass without notice. The address of the Irrigation Committee lately issued exhibits a conscious power that may well attract the attention of people and politicians. The irrigation problem merits the consideration of all who have a great future for the State at heart. Whoever has the ambition which seeks to pass the glory of political honors to his posterity, whoever desires that his children, and his children's children, may profit from the advancement of the Commonwealth, will not carelessly cast aside the irrigation question as unworthy of room in his thoughts. We have come to view the astonishing material progress of the State from year to year as a matter of course, and have not sought the causes of our rapidly increasing wealth, beyond a general idea of the illimitable resources of our soil and climate. A cursory glance at the statistics will reveal the fact that a large part of the people subsist from irrigation, and that millions of the annual wealth of production comes from the same source. Also that the future annual increase of production by the same means, almost defies calculation.

Shall we foster irrigation or abandon it? That is a question for this people to answer at the next election. Are we of this country interested in the answer? None more so. The greatness of New York City, of every commercial metropolis, rests upon the populous and productive interior to which it may be the market and depot of supply. Whatever builds up San Francisco and Oakland adds to the value of lands in the suburbs and vicinity. Put three million people into the San Joaquin valley, and these two cities will have a population of a million to be fed from your gardens, orchards and farms. But to this the right of irrigation must be guaranteed. There are fifty million acres of land awaiting that guarantee. There are a million acres now ditched and ready for cultivation, open to sale to colonists and settlers, which will be filled the moment water rights for irrigation are assured. The only barrier to an immediate enormous immigration into Southern California is an obsolete rule of law known as the English common law doctrine of riparian proprietorship, by virtue of which the owner of lands at the mouth of a river can prevent any use of the water above him. This rule of law is now being asserted and must be stamped out for the sake of irrigation. To this end are the irrigators organizing. They will have the sympathy and vote of all far-seeing men.

San Leandro Reporter.

Irrigation Convention.

On May 20th there will meet in San Francisco a representative body of representative men from various portions of the State, whose business it will be to plan and lay out a great work—a work of immeasurable importance to

the future welfare of California. We speak of the Irrigation Convention, the call for which has been heretofore published.

It is now approaching two years since the agricultural population inhabiting the great almost rainless valleys of the State and the mercantile and manufacturing classes interested with and dependent on, in a degree, upon them, were startled with the announcement that the laws of California do not recognize the right of the people to appropriate and divert water from running streams for the purpose of irrigation. Our readers are so familiar with the exact issue of the controversy between the irrigators and riparianists that we need not here restate it. In our judgment a vast majority of the people who gave the subject attention, and no subject has been more discussed, considered and now consider that the rule of law announced by the Supreme Court was, and is, fraught with infinite mischief and danger to the present welfare and future prosperity of California. In a word, and without entering into details, irrigation is absolutely necessary to the existence of agriculture, to any extent, in the State; and in the term agriculture we include vine culture and fruit raising in the great valleys.

As soon as it became known that the English common law doctrine of riparian rights had been recognized and to the exclusion of the right to appropriate and divert water for irrigation, the whole southern part of the State, which is most affected by the decision, was aroused. In a short time two conventions were called and held, one at Riverside and one at Fresno. Committees were appointed to apply to the Legislature for relief from the threatened danger. Bills were drafted and carried to Sacramento. It was found that the Governor and a large majority of both houses of the Legislature were favorable to the measures, but the session passed away without final action. A few connubiating and filibustering Senators succeeded in defeating the bills—hence the present movement.

This question must be settled and at once; there is too much at stake, not only the millions invested in lands dependent upon irrigation and in canals and ditches, but, too, as we have said, the mercantile, mechanical and manufacturing interests connected with agriculture. Until this overshadowing issue is settled improvement will be checked in a great degree and these interests will continue to suffer.

The work for the May convention to do will be to effectually arouse the people of the State to a comprehension of the evils of riparianism, and the importance of irrigation, and to perfect an organization throughout the State that can make itself felt at the election in November, and this we understand to be the intention of those interested in the movement. Since they have been placed by the courts and the Legislature in the position to be compelled to depend upon political action they propose to make a political issue of their fight. Success to the irrigators.

Inyo Independent.

Irrigation.

No other question now before the people of this State is of so much importance as that of irrigation. Upon a wise settlement of this matter the prosperity of the State will in great measure depend. The present state of the law governing the use of the water from streams is very unsatisfactory, and should be remedied as speedily as possible. Bills were introduced at the last session of the Legislature, that would have remedied most of the existing evil, but as the *Rural Press* says, failed through the ignorance of the members of the Legislature. It is important that measures should be undertaken to secure a better understanding of these matters. It is necessary that the coming Legislature should act upon the subject and enact laws which shall meet the needs of the people and the growth of the State. The subjects were brought before the last Legislature and a strong effort made to secure legislation, but without effect. Much of the difficulty laid in the ignorance of many of the legislators whose lives have been cast beside city walks, rather than beside running streams. By beginning early this year, it is hoped that men can be elected who have clear ideas upon the subject and can be trusted to legislate intelligently.

Mariposa Herald.

Irrigation.

Among other important questions now agitating California is whether an irrigation system should be ingrafted into our law. As the law now stands the old English common law prevails; and under it, owners of land bordering upon a stream are entitled to the flow of the stream. Owing to the physical condition and situation of England, the doctrine of riparian rights was politic, consistent and just; but in this State where different physical conditions exist, where the streams are larger and longer, and where vast volumes of water flow unused and without profit to the sea, a different policy should obtain, and the rights to the use and benefits of water should be conformable to our natural status. A rational, practical irrigation system stands knocking at our door asking admittance. Vast tracts of thirsty, barren lands, unfit for anything as they now are, would bloom with verdure and fruitfulness, if properly and systematically irrigated. Our sister county, Fresno, with her arid acres of sandy plains, has tasted the refreshing, invigorating draughts of water. Whole sections of that county, a few years since a desert waste, now present the very picture of thrifty life, where happy comfortable homes, substantial and elegant schools, neat and spacious churches, have sprung into life as if touched by the wondrous power of magic. All this change, wrought by a deviation from the law as it now is, will be swept away if irrigation gains no footing; all the improvements that have been made will sink from sight, and the same old desolate aspect will meet the inquiring look of passing travelers.

All the beautiful, happy, useful results growing from a diversion and spreading of water, are brought about by no material comparative injury to other enterprises. Thousands of acres now lying unused and unoccupied in all parts of the State, and of no account to man or beast, would be transformed into the busy scenes of prosperity and culture. Thousands of families would plant themselves in our midst and reap an enjoyable living. Invested capital would realize a fair return, and all sections would be tributary in building up the splendid possibilities of our future.

Legislative action is necessary to accomplish the desired end. The existing law must be repealed, and new and adequate provisions adopted in lieu thereof. Friends of irrigation are alert, and are taking "Time by the forelock" so see to it that proper representatives are sent to the next Legislature. Merced is about entering into an era of prosperity through irrigation. Our neighbor sees the utility and advisability of such a system; and it is therefore almost if not absolutely safe to say that this Assembly District will send a man to Sacramento imbued with the spirit of irrigation and pledged to use every effort in securing the necessary change in our law.

Daily San Diegan.

Riparianism.

Are you a riparian or anti-riparian, is the question the voluble politician will be called upon to answer, and in certain sections of the State, to dodge this question or skulk behind an ambiguous answer means political death and a hasty burial. The Executive Committee of the State Irrigation Convention has sent an address to the press throughout the State, which is a ringing document on this important question, and voices with no uncertain sound the purposes of anti-riparians, and the issues involved in the settlement of an old English law, that is as much out of place in its application to the necessities and conditions of California as the feudal law of the Middle Ages would be in the midst of American political institutions. We believe that running water, like the air, is the free gift of God, and not to be possessed, appropriated and held by the few to the detriment and destruction of the many. The peculiarities of our soil and climate, the extremes of dryness and moisture that divide our seasons, fixed by an inexorable law the necessity for artificial irrigation, without which the mighty possibilities of future development of the agricultural resources of this State will be strangled at the very threshold of its almost miraculous career. Riparianism in its tendencies and ultimate results will produce a condition of affairs similar to the horrible strait of Coleridge's mariner, "water, water everywhere and not a drop to drink." Millions of gallons of water would flow uselessly to its appointed reservoir, the sea, if riparianism is to prevail as the absolute law of the State. Manifestly this is wrong in theory, law and results. Every agency that nature has placed in our reach to rescue the soil from barrenness to fertility should be utilized, and the right should exist paramount to all individual ad-

vantages to appropriate that which will subserve the good of the many. It is a law eternal as the hills, and unchangeable as that of the Medes and Persians, that the rights of the few must yield to the necessities and welfare of the many. Riparianism is centripetal in its tendencies, irrigation is centrifugal in its scope and purposes, and should be the law and the gospel of California.

Fresno Republican.

Riparian rights will be so deeply buried by the irrigationists this fall that the question will never again stand in the way of progress and prosperity in our State. It is a disgrace to California courts that English common law was ever admitted as applicable to the water question in this State, and this admission was a mistake that the people are going to correct at the coming election. The Governor, Judges of the Supreme Court and members of the Legislature to be elected this fall will have to hold up their right hands and take a solemn pledge to carry out the will of the people in favor of irrigation.

Santa Cruz Sentinel.

A Cripple or a Giantess.

It is impossible to exaggerate the supreme importance of this irrigation question to our State. California will be a hobbling cripple if the riparian doctrine prevails; she will be a robust giantess of unrivalled powers and queenly mien if the irrigation doctrine is established. That doctrine is already established in the will of a vast majority of our people. All that is needed is to give that will a legal form and direction. This is the object of the proposed Convention.

Kern County Gazette.

Irrigation in the Coming Campaign.

There is no mistaking the tenor of the ringing address of the Executive Committee of the State Irrigation Convention, issued on April 6th. It sounds the keynote of the coming political campaign, and it means that the irrigation issue is to become paramount to all other considerations before the polls. The irrigators are fully alive to the fact that riparianism is menacing their very existence, and they are preparing to speak in thunder tones in the assertion of their rights and in the maintenance of the principles that "the right of appropriation of water for beneficial purposes is and always has been paramount to any alleged rights of riparian owners in this State." The address recites the history of the movement to secure the passage of bills remedying the evils of existing laws relating to appropriation and administration of water, framed and recommended by the Fresno Convention of 1884, the earnest support of these measures by the intelligent press of the

State and the last Legislature, through the parliamentary filibustering of the riparian minority in both houses, notwithstanding the active sympathy given them by a vast majority of the people of the State. After referring to the progress already made in irrigation, it is stated that the acreage is insignificant compared with the desert unreclaimed, and that within the rim of great interior valleys there are 64,000,000 acres of inhabitable land, equal in area to all the New England States and New York and Pennsylvania added, whose combined population is 13,427,270 souls. The total population of our valleys is but 284,000, or $5\frac{1}{2}$ persons to the square mile, while the average population of the San Joaquin and Sacramento valleys is even less—4.9 per square mile. If these latter valleys were as densely populated as the basin of the St. Lawrence their inhabitants would number 1,856,000; if equal to the New England coast, 3,588,000; if equal to the Ontario basin, 4,523,000; if equal to the valley of the Delaware, 10,208,000. The conclusion to be drawn from these statistics is that the valleys of California should support a population of 11,000,000 people; but that these results can only be secured by irrigation, on account of the lack of rainfall, its uncertainty from year to year, and its unequal distribution throughout the season when it is needed for the maturing of crops. To add force to these statistics a comparison might have been drawn between the relative density of the population upon irrigated lands, and that supported by farming lands dependent solely upon rainfall. We venture the assertion that if the truth were known the irrigation communities of this State can show an average population ten times as great per square mile as the average population upon the irrigated farming lands, and this of itself is the strongest evidence of the necessity of irrigation and a radical change in methods of farming, in order that the lands may support the greatest population of which they are capable.

The richest of soils, the most genial of climates, and water in abundance fed by exhaustless snows and springs, are here to be found, and "the thought is insufferable that uncongenial law shall permit human selfishness to forbid the bands between these gifts of God, and by keeping land and water wastefully apart, deny the world the benefits and blessings of their union."

The counties vitally interested in irrigation cast upwards of 40,000 votes, and to these voters the address of the committee appeals to form themselves into anti-riparian irrigation clubs. In union there is strength, and these clubs organized and united, with the earnestness of purpose and unflinching determination of men defending their homes from desolation and ruin can dictate the coming campaign. To them all other political considerations will be dropped, and only those men who favor progressive development in the State by irrigation can be elected as governor, attorney-general, Supreme and Superior Court judges, and legislators, if their united efforts are of any avail. A State Convention is called to meet in San Francisco May 20th. It will consist of delegates from the clubs throughout the State, and its object will be to effect a permanent central organization to perfect the scheme of laws required by the irrigators and urge their passage by the next Legislature,

and to formulate a plan of action to be followed in the coming political campaign, of which they may make their strength felt in every precinct in the State. Their objects only need to be understood and the nobility of their purposes appreciated, to insure them a rousing success in the campaign. Who is there that will oppose measures, the ultimate result of which will make California one of the wealthiest and most popular States in the Union, and create in San Francisco a trade center second only to New York in size and importance? Certainly none but those who have selfish personal ends to gratify, and care nothing for the public welfare. It is the duty of the press and the friends of irrigation to disseminate information on this subject, to convince the public of the loftiness of their aims, and to show in their clearest manner the serious import of the issues before them. When clearly understood it will dawn upon the public mind that the irrigation question far exceeds in importance that of hydraulic mining, or any other similar issue which has been appealed to the judgment of the public and the courts, and when so understood there can be no doubt of the public verdict. The right must triumph and irrigation will win.

Los Angeles La Cronica.

Cuestion Magna.

En nuestra cuarta página damos una traduccion del memorial que al público han dirigido los miembros del Comité Ejecutivo de Regadores del Estado. Como nuestros lectores verán, la cuestion es de interés vital para el Estado, y debe posponerse á toda otra cuestion de mera conveniencia política, que generalmente solo resulta en ser empleados los que ahora no lo están, ó en que continúen viviendo del presupuesto los que ahora gozan de él: generalmente estos cambios se reducen á un cambio de píldoras, que tanto unas como otras hacen el mismo efecto al estómago del pueblo, que es quien paga.

Pero la proposicion que presentan los regadores es mucha más importante y se cifra en el principio de si hemos de aprovechar las aguas para hacer fructificar terrenos ahora improductivos, ó dejar que estos continúen desiertos porque les place á unos pocos que el vivificador líquido se pierdo en el mar.

No creemos que el memorial citado dejará de hacer su efecto, pues apela á los mejores intereses de los ciudadanos de todas clases, pues la agricultura es la base más sólida de la riqueza de este Estado, y el agua de riego es un elemento indispensable para su completo desarrollo. En la importantísima eleccion que este año tendrá lugar esta debería ser, y será, no lo dudamos, una de las cuestiones principales, sino la principal.

Die Bewässerungsfrage.

Die Frage über die Vertheilung des Wasservorraths in Californien ist eine äußerst wichtige und ein Conflict zwischen den Vertretern der beiden Gesichtspunkten, unter denen die Frage betrachtet werden muß, ist unvermeidbar. Ein Compromiß ist unmöglich.

Entweder gehört das Wasser, welches von unseren Bergen herabströmt, den Leuten, die beabsichtigen, die brach liegenden großen Ebenen unseres Staates zu bewässern, oder den wenigen Grundeigenthümern am Flußufer.

Wenn es wahr ist, wie die Befürworter der Vertheilung des Wassers sagen, daß die natürlichen Umstände in Californien der geringe Regenfall, die Fruchtbarkeit des Bodens, wenn er durch die Wirkung des Wassers befruchtet wird, der warme langandauernde Sonnenschein und andere Umstände, die Hervorbringung von Niederlassungen bewirkt haben, so besitzen die Uferbewohner als solche keine Rechte auf das Wasser, welches ihr Land durchfließt.

Wenn im Gegentheil das englische Gesetz diesem Land aufgedrungen worden ist, ob durch gesetzliche Anordnung oder durch die Erlasse der Richter; wenn die Gesetze über Wasserrechte und die Ueblichkeiten einer stets in Nebel gehüllten Insel, die genügend Bewässerung hat, Anwendung finden sollen auf dies trockene und doch unter Umständen luxuriöse Land des ewigen Sonnenscheins, dann lasse man eben das Gesetz walten und das Wasser muß ausschließlich dem Uferbewohner zugesprochen werden. Die Frage kann, wie gesagt, nur mit „Ja“ und „Nein“ beantwortet werden.

Wenn die Rechte der Uferbewohner anerkannt werden, d. h. wenn das Eigenthumsrecht des Wassers dem Grundbesitzer am Ufer des Flusses allein gehört, dann wird nach dem englischen Gesetz die hier so nothwendige Bodenbewässerung unmöglich und die Civilisation wird auf die Flußufer, die Ufer unserer Bäche und unserer Sümpfe beschränkt werden, in welsch' letzteren viele Minnsale verschwinden. Selbst die Uferbewohner dürfen die Wasser des Flusses nicht ableiten und dadurch vermindern, weil das Gesetz dies verbietet.

Die nothwendige Schlußfolgerung aus dem vorgebrachten Argument ist, daß die klimatischen Verhältnisse unseres Staates erheischen, daß die Ansprüche der Uferbewohner nicht berücksichtigt werden.

Die Frage muß entschieden werden, daß ein für allemal die Uferbewohner kein exclusives Recht auf das Flußwasser haben, welches ihr Land zwecklos durchfließt.

In Bezug auf die Rechte für das Wasser für Irrigation gilt das Gesetz frühesten Besitzergreifung, welches in allen Ländern anerkannt wird und auch hier gelten sollte.

Eine Versammlung der „Irrigators“ hat kürzlich in Fresno stattgefunden und wir sind begierig, ob die dort gefaßten Beschlüsse die nöthige Wirkung auf die in der Frage Betroffenen und die gesetzlichen Entscheidungen haben wird. Die Frage ist eine der wichtigsten, welche jetzt die Aufmerksamkeit der Farmer auf sich zieht.

PETITIONS

PRESENTED TO THE SENATE AND ASSEMBLY, ASKING THE PASSAGE OF
IRRIGATION BILLS.

To the Senate and Assembly of the Legislature of California:

Your petitioners, citizens and land owners of the county of Fresno, do respectfully represent to your honorable body that our property, our homes, and our very existence depends on the right of appropriation of water for irrigation, and we pray that you will place us under the protection of law. We respectfully represent that we are satisfied with the bills now before your honorable body, which were prepared by a committee appointed by a convention of irrigators, held in the town of Fresno last December, said committee being fully informed of our wants and necessities and having provided for them to our satisfaction. That your action in this matter may be speedy and favorable, your petitioners will ever pray.

Names.	No. Acres Owned.	Valuation.
S. N. Walker.....	3,700	\$32,000
W. H. Chance.....	500	14,000
A. G. Andersen.....	40	2,000
S. W. Henry.....	164	1,000
S. C. Booth.....	60	2,500
P. B. Donohoe.....	664	30,000
Wm. Wilkenson.....	560	16,000
Otto Froelut.....	31	10,000
Geo. H. Eggers.....	3,000	200,000
W. P. Quick.....	80	15,000
M. F. Tarpey.....	160	10,000
Geo. W. Taps.....	80	5,000
Geo. Bernhard.....	60	5,000
J. S. Elliott.....	480	15,000
C. Erickson.....	80	16,000
Wm. Bitteridge.....	85	3,000
C. W. Cutler.....	40	4,000
G. W. Hensley.....	40	8,000
C. G. Sayle.....	1,500	26,000
M. S. Harris.....	20	1,500
C. A. Fuller.....	40	8,000
F. E. Paddock, Jr.....	40	4,000
Chas. A. Beesley.....	40	10,000
Fred Kramer.....	860	15,000

Names.	No. Acres Owned.	Valuation.
A. W. Lyon.....	80	\$10,000
J. W. Coffman.....	40	4,000
J. R. Austin.....	40	3,000
W. J. Dickey.....	210	5,000
Jim Cory.....	120	16,000
Chas. Warfield.....	15	2,000
J. Rock.....	20	1,000
S. S. Wright (Agent for).....	5,000	150,000
Geo. Studen.....	5	5,000
Wm. H. Ahers.....	5	5,000
Wm. Gash.....	70	8,000
Baird Bros.....	160	16,000
D. C. McLaughlin.....	20	2,000
Daniel McLaughlin.....	40	18,000
Wm. Adams.....	40	4,000
E. Keeler.....	325	4,000
C. H. Haun.....	50	11,000
Jos. Lee.....	110	9,000
B. F. Burton.....	80	4,000
John Brown.....	480	9,000
J. W. Loper.....	20	2,000
L. Lewis.....	240	7,000
C. H. Carghill.....	20	3,000
H. N. Ewing.....	80	,000
P. K. Peaters.....	20	3,000
A. F. Peaters.....	20	3,000
A. D. Ewing.....	20	3,500
F. A. Eddy.....	10	1,200
H. B. Choice.....	400	15,000
A. H. Statham.....	403	25,000
E. H. Gould.....	200	20,000
Estate of Geo. H. Briggs, deceased, by A. P. Catlin, Administrator.....	4,500	250,000
A. P. Catlin.....	575	12,000
G. R. Fanning.....	160	8,000
F. J. Haber.....	80	4,000
W. T. Oden.....	320	15,000
John Wilde.....	80	6,000
E. L. Wemple.....	20	4,000
S. B. Breser.....	40	4,000
Jesse Trome.....	320	6,400
B. F. Lawson.....	80	7,000
Wm. C. Ryce.....	640	10,000
D. Bruce.....	320	1,500
E. P. Hughes.....	160	10,000

Names.	No. Acres Owned.	Valuation.
W. F. Rowe.....	7	\$1,300
George Church.....	180	13,000
S. W. Griffith.....	136	18,000
E. J. Griffith.....	80	2,000
T. O. Wilburn.....	80	4,800
Jos. Porteous.....	100	5,000
A. Pave.....	20	3,000
W. Harvey.....	40	2,000
W. Harvey, Agent for Perrin.....	3,600	36,000
Tho E. Church.....	30	2,000
G. W. G. Glenn.....	40	9,000
M. Neiderer.....	20	3,000
Stevens Brothers.....	100	12,500
H. C. Colwell.....	20	2,000
B. Marks.....	700	60,000
W. J. Prather.....	160	5,000
Geo. S. McNeil.....	30	3,500
S. A. Miller.....	30	4,500
J. W. Williams.....	100	2,000
Jas. Carnecross.....	40	8,000
A. B. McCorkle.....	4	1,000
M. T. Wilson.....	2 lots	200
Robert Smith.....	201	40,000
Mrs. Robert Wright.....	320	7,000
Mrs. J. Miller.....	160	3,000
Robert Barton.....	640	50,000
C. S. Pierce.....	10	1,500
Wm. Sutherland.....	80	8,000
John Beard.....	343	7,000
R. A. White.....	20	4,000
M. Ocbiner.....	80	7,500
McConnell & Co.....	420	14,000
Wm. Sutton.....	20	1,500
J. P. Vincent.....	280	32,000
A. S. Bamfield.....	480	9,000
A. S. Goldstein.....	20	800
M. F. & S. Co.....	5,000	25,000
H. Hedinger.....	82	2,500
J. W. Conner.....	20	1,200
John Wallder.....	20	2,000
B. B. Pierce.....	20	3,000
C. W. Howard.....	20	3,000
W. B. Moore.....	20	4,000
M. Z. Donahoe.....	500	50,000
L. Anderson.....	480	7,800

Names.	No. Acres Owned.	Valuation.
R. M. Wilson	60	\$6,000
M. Madsen	400	7,000
C. J. Christiansen	20	2,500
Wm. M. Hughes	320	50,000
M. L. Smith	160	1,500
W. H. McKune	640	4,000
A. M. Clark	640	7,500
J. S. Eastwood	40	2,000
Packard Bros.	20	3,000
Moses Dodge	20	1,200
L. P. Hogue	240	6,000
G. Eisen	640	25,000
F. Roedling	3,200	100,000
D. Duquesne	2	2,000
S. H. Hill	320	4,000
J. J. Beyburn	640	8,000
A. Loveall	163	2,500
B. T. Elmore	400	7,000
S. H. Cole	200	8,000
D. R. Thayer	40	4,000
J. F. Morga	640	4,500
J. W. Reese	90	16,000
J. A. Lindsey	30	1,800
W. A. Linforth	50	3,000
C. Schmidt	40	8,000
F. A. Woodworth	160	30,000
Samuel Johnson	40	1,600
J. E. Hughes	480	35,000
Thos. E. Hughes	560	75,000
F. Jansen	80	800
J. F. Simpson	20	4,000
Wm. Hamilton	404	3,000
Wm. & Anna Hawkins	640	10,500
P. A. Burnette	200	3,000
J. Harmon	160	3,000
L. B. Church	320	32,000
M. H. Briley	40	8,000
P. Johansen	40	8,000
E. B. Perrin	40,000	400,000
G. W. Owen	640	12,000
P. M. Corfley	160	10,000
J. B. Hancock	160	4,800
R. L. Dickson	40	4,500
W. S. Graves	500	30,000
C. B. Pressley and H. S. Dixon	100	12,000

Names.	No. Acres Owned.	Valuation.
T. L. Reel	1,000	\$20,000
L. L. Dixon	Town Lots.	1,500
M. R. Medary	" "	4,000
L. Shaw	" "	3,000
Rutner, Goldstein & Co.	640	10,000
Lewis & Bard	360	25,000
J. T. Goodman	130	30,000
J. M. Meiskell		
Phillips Bros.	240	9,600
J. W. Gerrhart	Town lots.	500
Lewis Waggoner	480	10,000
W. H. Jackson		
C. T. Riggs	807	16,000
E. M. Morgan	602	12,000
J. H. Brady	200	20,000
J. A. Blasingame	10,000	100,000
B. R. Woodworth	240	30,000
E. A. Baird	240	6,500
J. A. Ewing	390	15,600
Geo. E. Freeman	40	4,000
J. E. Dickensen	120	2,400
C. L. Walter	240	1,200
W. J. Berry	760	11,400
W. D. Eericke	180	10,000
J. W. Furguson	160	4,800
Iowa and California Fruit Co.	320	25,000
Rosendal & Walton	100	5,000
F. H. Adams	160	12,000
John S. Dore	20	3,000
M. W. Miller	160	10,000
W. E. Gilmore		Merchant.
F. K. Prescott	20	4,000
S. C. St. John		Merchant.
J. L. Lewison & Co.		"
F. J. Davis	80	2,400
Geo. M. Edmunds	100	2,000
G. J. Markewitz		Merchant.
John Acworth	80	2,600
J. G. McCall	640	12,800
M. W. Brelenberg		
W. H. Parker	650	19,500
W. D. Hill	164	3,300
R. B. Johnson	100	2,000
Rennie & Noble	220	6,600
A. F. Baker	160	2,400

Names.	No. Acres Owned.	Valuation.
J. J. Grenham	200	\$2,000
Thos. R. Brown.....	250	3,000
Jas. Roberts	180	2,000
C. G. Anderson	40	2,000
James W. Smith	20	3,000
J. M. Sumner.....	20	2,000
E. Kauntze	80	4,000
M. Sides	400	10,000
A. Barieau	80	7,000
M. Martin	40	1,600
F. B. DeWitt.....	160	6,000
D. B. Stephens.....	160	6,000
W. H. Deedrick.....	40	1,200
T. J. Anderson.....	3	500
J. E. Whitsen	160	10,000
S. B. Shaw.....	160	5,000
J. A. Hodges.....	80	4,000
W. A. Yost.....	23½	1,000
Jas. H. Gay.....	160	5,000
J. H. Payne.....	80	3,000
D. Gourguet	48	4,800
E. P. Falconer.....	120	12,000
W. S. Staley.....	80	12,000
J. M. Rose.....	160	7,500
F. Ross.....	40	2,000
I. Von Glasen.....	160	6,000
J. H. Walker.....	320	6,000
H. R. Beyman	240	5,000
A. H. Graves.....	3	500
D. E. McCloskey	40	2,000
Oscar Dunke.....	20	1,000
W. S. Van Emon	160	5,000
Wm. Maze.....	160	5,000
F. J. Otis.....	160	6,000
F. B. Cody.....	160	4,000
J. A. Stroud.....	1,400	28,000
J. E. Yokum	80	2,500
O. S. Davis.....	40	1,500
H. I. Fowler	160	4,000
Jas. Karnes	3,000	60,000
I. T. Bell	40	1,500
I. A. Rose.....	80	3,200
F. M. Cox.....	80	2,800
John Meyer.....	95	3,500
R. W. Goodell.....	160	3,000

Names.	No. Acres Owned.	Valuation.
Hugh Forsman.....	160	\$3,000
H. N. Cutler.....	80	3,200
W. D. Lagrange.....	40	1,200
M. L. Dean.....	320	9,000
E. H. Tucker.....	1,500	30,000
A. M. Terny.....	160	6,600
W. T. Martin.....	220	5,000
M. M. Cooper.....	160	4,500
F. A. Wood.....	80	2,000
G. A. Walker.....	220	2,600
John Tuft.....	80	3,200
Jas. B. Sheat.....	1,000	30,000
C. Baley.....	240	7,000
W. W. Baley.....	240	8,000
D. H. Cobb.....	60	2,400
W. J. Caldwell.....	160	10,000
W. T. Cox.....	89	1,500
W. A. Sanders.....	260	10,000
Z. T. Jordan.....	160	1,000
B. N. McCloskey.....	180	7,500
B. M. Crow.....	40	1,600
J. W. Whitsen, S. T. Prather & Bro.....	Town lots	-----
Hy. Hausberger.....	280	8,400
R. G. Woods.....	160	6,000
M. Snyder.....	80	4,000
T. J. Otis.....	160	6,000
J. G. Dawes.....	960	4,800
J. A. M. Vanness.....	40	400
L. W. Spencer.....	240	2,400
Theo. Schilling.....	160	6,000
C. Schilling.....	320	10,000
R. E. Spence.....	160	4,000
Elisha Harlan.....	160	1,600
G. W. Mooney.....	160	10,000
Jas. H. Powell.....	320	6,000
J. Schonwand.....	600	4,000
Zumwalt & Baker.....	80	1,000
R. R. Lee.....	40	700
J. M. Smith.....	160	6,000
J. H. Thrasher.....	40	1,000
H. P. Cease.....	80	1,500
Joaquin F. Prerro.....	80	2,000
N. F. Martin.....	186	9,000
Turner Elder.....	160	4,000
Drury Elder.....	80	2,000

Names.	No. Acres Owned.	Valuation.
N. C. Carrington.....	160	\$4,000
W. G. Thasher.....	40	700
J. R. Baird	160	5,000
Jos. Johnson.....	160	5,000
O. R. Kinkerlin	160	3,000
Wilson P. Mickel.....	100	2,000
Freedom Bennett.....	90	2,000
L. Cohen, Merchant		
John B. Kelso.....	20	8,000
C. H. Robinson.....	160	8,000
J. L. Gilbert	320	\$40 per acre.
E. T. Hammers.....	320	" "
W. S. McCartney	80	" "
W. D. Read	160	" "
Read & Dudley.....	152	" "
E. Johnson	169.52	4,000
A. W. Wibber	3,300	66,000
Grand total.....		<u>\$5,042,000</u>

The undersigned, owners of land along the banks of Kings River, respectfully represent to your honorable body, that the owners of the bank lands, otherwise known as riparian owners, are interested in irrigation as much as others, and respectfully pray your honorable body to pass Senate Bills 210, 37, 38, 39, 40 and 41.

E. D. Morrison.	Susie Sutherland,
N. J. Layton,	Ellen Wimmer,
T. Williams,	James Sutherland,
R. T. Ray,	C. F. Riggs,
J. A. Stroud,	R. Wilson,
T. B. Hays,	J. F. Brooks,
S. W. Hays,	Joel Lyall,
Sam Davis,	D. Burris,
Solomon Davis,	John R. Palmer,
M. P. Warner,	A. T. Yeargin,
T. S. Beatty,	D. J. McConnell,
E. M. Morgan,	D. Wait,
J. M. Bell,	A. G. Anderson,
D. K. Zumwalt,	R. C. Thorn,
W. T. Martin,	W. McHaley,
A. Farley,	S. M. Phillips,
Lewis Waggoner,	Robert Stevenson,
Mr. F. Sutherland,	S. Traukenan,
T. P. Sutherland,	D. P. Blivins,
Edward Sutherland,	N. Phillips, Jr.,
Gillis Sutherland,	M. C. Hoag,
Delos Swain,	
Elisha Harlan,	900 acres, value \$10,000.
B. H. Burritt,	240 " " 4,000.
James H. Banelle,	320 " " 6,000.

We, the People of Merced County in Mass Meeting, on Monday, February 22d, 1885, ask and demand of our Senators and Assemblymen, and of the present Legislature, to pass Senate Bill No. 210, and Assembly Bill No. 410.

H. H. McCloskey	Lucien Curtis.
J. W. Robertson,	W. Fahey,
John Grebe,	Geo. P. Lee,
M. B. Cusick,	J. C. Bannister,
E. S O'Brien,	A. A. Eleat,
C. C. Mitchell,	J. M. Hollister,
Robert N. Hughes,	Thos. Harris,
H. M. Rucker,	A. H. Dauchy,
Wm. W. Gray,	Wm. Wegner,
J. W. Blackburn,	John Morley,
C. C. Smith,	H. W. Leeker,
Thos. S. Peck,	Geo. Ponway,
P. A. Spooner,	W. L. Ashe,
Geo. Reuter,	Sam'l C. Bates,
H. W. French,	A. J. Meany,
J. F. McSwain,	Smith,
W. H. Mitchell,	W. W. Abbott,
J. L. Deford,	J. L. Melner,
C. J. Ehat,	A. Beeds,
T. E. Flournoy,	O. M. Stoddard,
Wm. Twomey,	C. H. Marks,
Wm. Fahey,	John Crosby,
W. E. Sesson.	

PETITION FROM KERN COUNTY.

*To the Honorable the Senate and Assembly
of the Legislature of the State of California:*

The undersigned citizens and tax payers, residents of Kern County, State of California, most respectfully represent that the very life and prosperity of that portion of the San Joaquin valley, situate in this County, depends upon the right of appropriation of water from running streams for irrigation purposes; and in view of a recent decision of our Supreme Court, enunciating the doctrine, "that the waters of streams must run in their accustomed channels undiminished in quality," we do most earnestly petition your Honorable body to enact a law recognizing and establishing the right of appropriation of the waters of the streams in this valley for the purposes of irrigation. Our property, our homes, our very existence as a community, depends upon immediate legislation in our behalf, for which we will ever pray, etc.

Kern County Bank, by S. Jewett, President.

H. A. Blodgett, Director Kern Valley Bank.

Sol. Jewett, " " "

A. Weill, " " "

A. F. Bernard, Treasurer Kern Co.

W. Tyler, Auditor,

N. R. Packard, County Clerk.

D. A. Sinclair, Deputy Sheriff.

Board of Supervisors, by the Chairman, J. M. McKamy.

A. Weill, merchant and land owner.

Phil. Jewett, farmer and land owner.

Sol. Jewett, " " "

C. W. Goodrich, farmer and land owner.

A. Heyman, merchant.

E. A. Dumble, farmer and land owner.

F. M. Carlock, land owner.

O. D. Fish, merchant.

Paul Galtes, merchant and land owner.

H. D. Bargwardt, land owner and butcher.

Thomas Owens, land owner.

John O'Miller, "

B. F. Rector, land owner and stock raiser.

S. M. Judd, land owner and farmer.

Hirshfeld Bros. & Co., merchants, property and land owners.

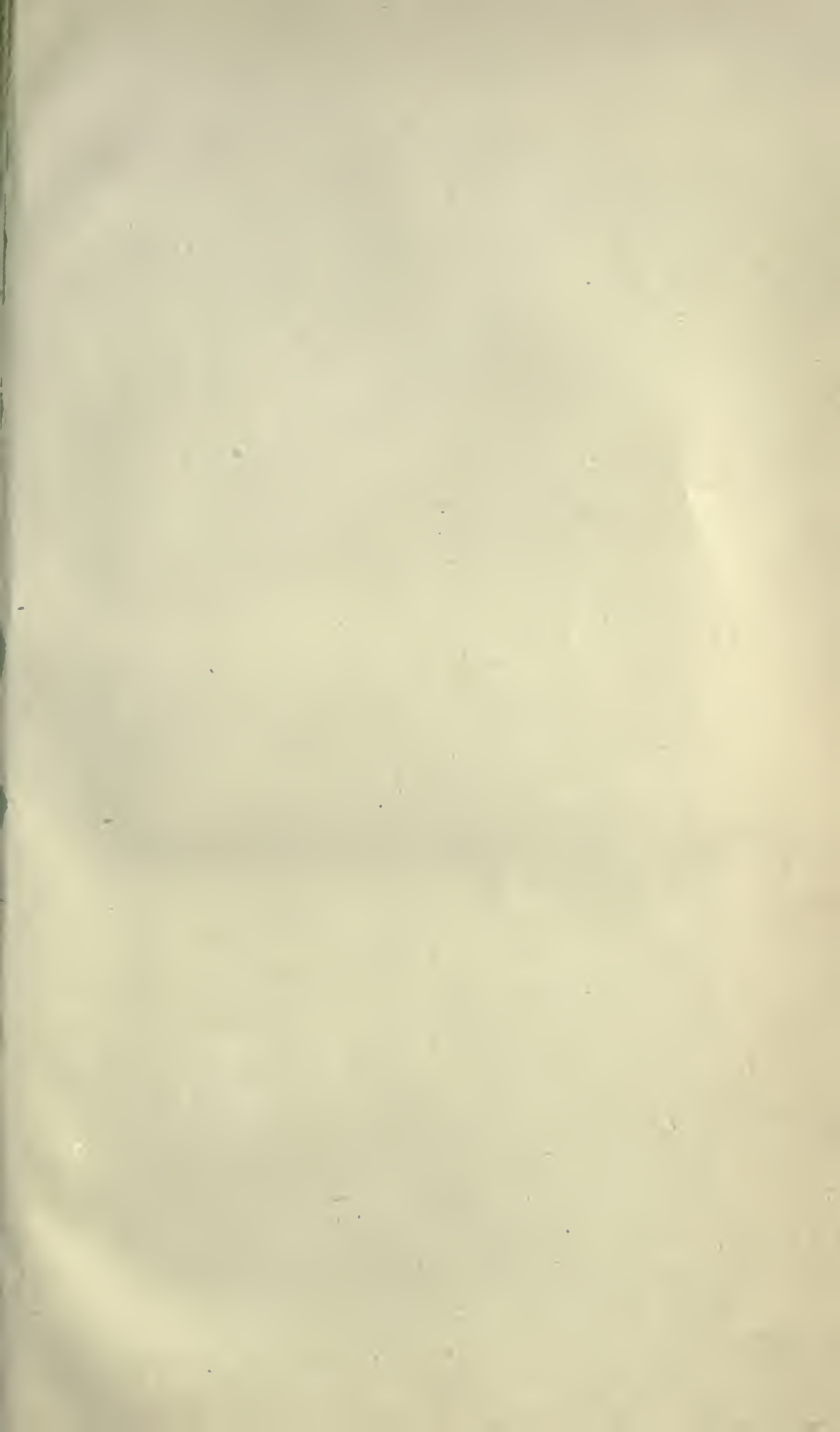
- I. Hirshfeld, merchant and property owner.
 Daniel Wagoner, farmer and land owner.
 W. R. MacMurdo, County Surveyor.
 O. O. Mattson, real estate owner.
 Ed. A. Pueschell, owner of 160 acres of land.
 R. Hudnut, land and property owner.
 M. C. Purcell, land owner.
 Dom Castro, "
 Tomas Castro, "
 H. F. Condict, "
 Mrs. J. D. Thronsen, land owner.
 H. C. Park, lumber dealer and real estate owner.
 Alonzo Coons, agent Wells, Fargo & Co. and merchant.
 A. P. Eyrand, hotel keeper.
 L. S. Rogers, land owner and physician.
 D. S. Loomis, land owner and stock raiser.
 H. H. Fish, real estate owner and stable keeper.
 H. H. Colton, Canal Superintendent.
 S. H. Anderson, farmer and land owner.
 A. G. Meyers, land owner.
 W. A. Howell, real estate owner.
 J. J. Darmul, farmer and land owner.
 W. T. Jameson, land owner.
 W. D. Hall, land owner.
 John E. Bailey, property and land owner.
 C. Brower, land and property owner.
 W. R. Bowen, Sheriff Kern County.
 I. L. Miller, hotel keeper.
 T. E. Harding, Assesor Kern County.
 C. H. Swain, land owner.
 D. A. Leonard, land owner.
 H. A. Blodgett, land owner and bank cashier.
 Chas. E. Jewett, stock raiser.
 F. D. Nelson, land owner.
 W. H. Scribner, property owner and merchant.
 J. E. Smith, blacksmith and property owner.
 B. Brundage, land owner and farmer.
 A. C. Mande, publisher *Californian* and land owner.
 J. W. Freeman, District Attorney, Kern Co.
 Thos. C. Miller, land owner.
 Thos. J. Davis, land owner.
 John F. Maio, druggist and property owner.
 L. A. Beardsley, land owner and farmer.
 E. P. Davis, livery stable keeper.
 Walter Bull, property owner.

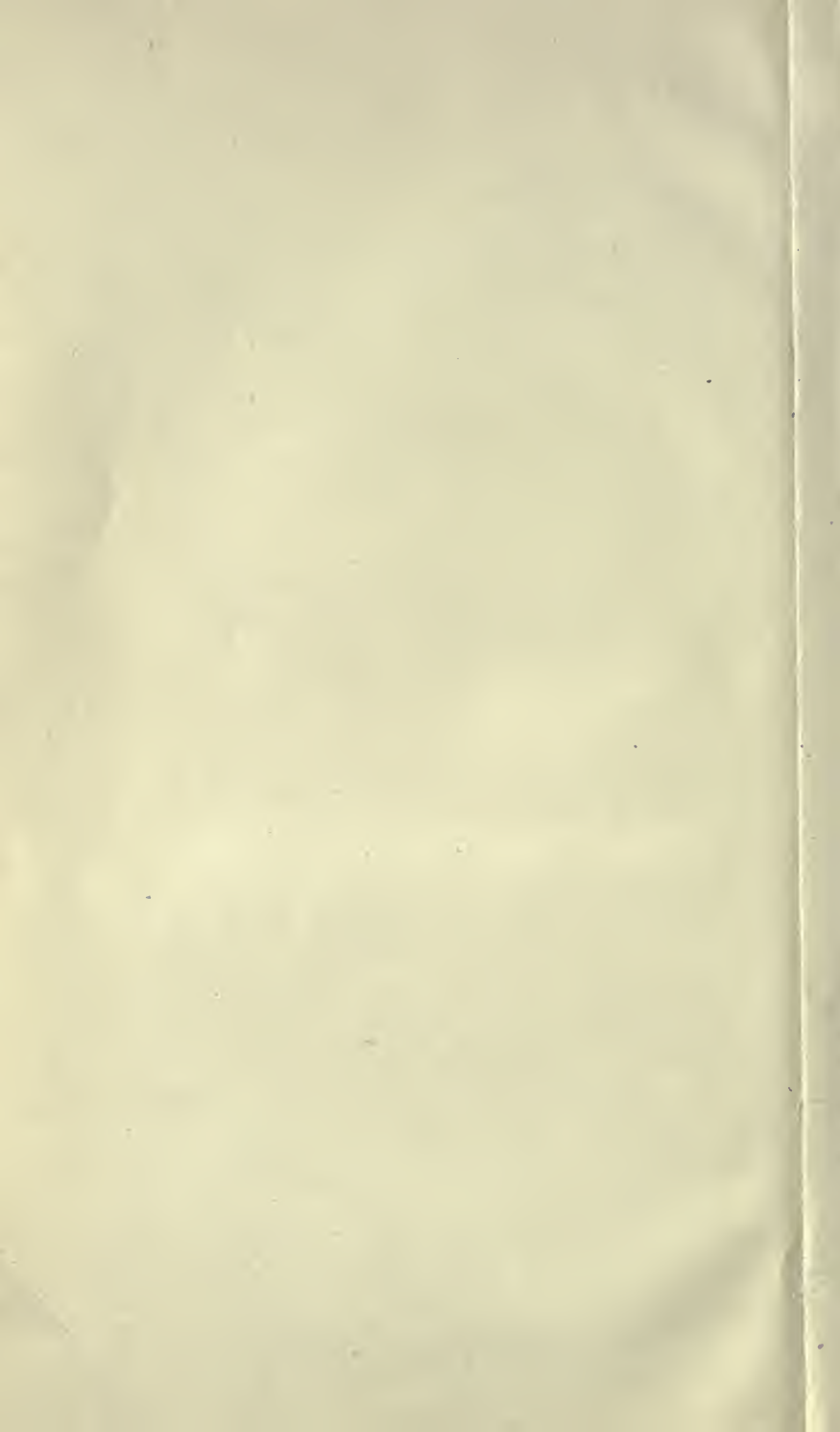
N. R. Wilkenson, J. P. and property owner.
M. W. Morris, land owner.
Wm. F. Nelson, land owner.
R. M. Payson, stock raiser and agent of Gen. E. F. Beale.
Franz Buckrens, property owner.
O. Brown, property owner.
C. H. Duvall, real estate owner.
Henry Bauer, land owner.
Mrs. Barbry, St. Merry, farmer.
E. M. Ashe, land owner.
John M. Keith, stock raiser and land owner.
G. W. Morrill, tax payer.
Chas. Buterbaugh, tax payer.
Geo. C. Doherty, tax payer and land owner.
W. P. McCord, stock raiser and land owner.
Alexander Hudnut, tax payer.
E. M. Roberts, land owner and stock raiser.
E. F. Gitel, hotel keeper.
Ed. O'Donnell, real estate owner.
J. Enas, farmer and land owner.
O. M. Taylor, land owner.
D. G. McLean, land owner and farmer.
D. Hill, land owner.
Dallas McCord, butcher and land owner.

Those signers represent on the assessment roll property to the amount of \$170,000.
Copy of memorial introduced in Senate by Senator Reddy from the people of Kern County, praying for the passage of irrigation laws.









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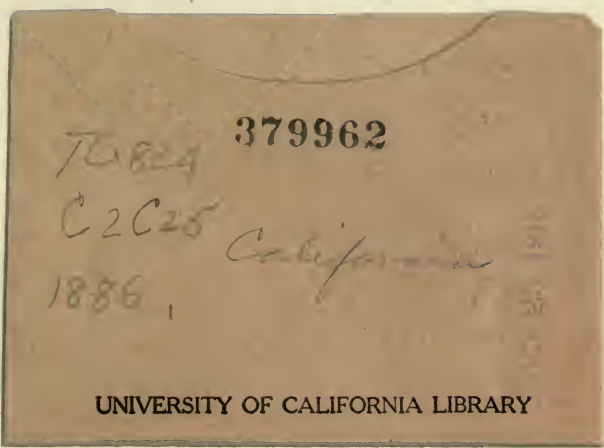
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