

# WATER LAW EXPOUNDED

Determination of relative rights of the various waterusers in the Grande Ronde river which is under study, will be resumed this winter by the State Water Board, and makes an understanding of the State Water Board code, upheld by the United States Supreme court recently, desirable. The decision of that court in case contains what is said to be the most complete and succinct epitomes of the statute on record. The opinion of the court, read by Justice Van Devanter, who was appointed from Wyoming, is, in part, as follows, and should be read by every user in this county:

This is a bill in equity to enjoin a proceeding before the State Water Board of Oregon, looking to the ascertainment and adjudication of the relative rights of the various claimants to the waters of Silvie river, in that state, the grounds upon which such relief is sought being (a) that it is essential to protect a jurisdiction previously acquired by the district court, and (b) that the local statute, 3 Lord's Oregon Laws, title XLIII, chap. 6, Laws 1913, chaps. 82, 86 and 97, authorizing and controlling the proceeding, is repugnant to the due process of law clause of the 14th Amendment. An interlocutory injunction was denied by the district court, three judges sitting (217 Fed. 95), and motions to dismiss the bill, as disclosing no right to relief, were afterwards sustained.

The plaintiff, a California corporation, owns large tracts of land along the river, and claims a vested right to use upon these lands a portion of the waters of the stream for irrigation and other beneficial purposes. The defendants are the members of the State Water Board, and a few out of many persons and corporations claiming similar rights in the waters of the river. The statute under which the proceeding assailed is being conducted was enacted in 1909 and amended in 1913, and most of the rights affected by the proceeding are claimed to have arisen prior to the statute,—the plaintiff's as much as thirty years before. All claimants to the waters of the river, including the plaintiff, were brought into the proceeding by due notice and in conformity with the statute.

A general outline of the statute, as it has been constructed by the supreme court of the state, will serve to simplify the questions to be considered. It recognizes that in Oregon rights to use the waters of streams for irrigation and other beneficial purposes may be acquired by appropriation, adopts a comprehensive scheme for securing an economical, orderly, and equitable distribution of the waters among those entitled to their use, incidentally prescribes a mode of determining the relative rights of the various claimants to the waters of each stream, and in large measure commits the administration of the scheme to the State Water Board and officers acting under supervision of its members. When one or more users of water from any stream request it, the board, if finding that the conditions justify it, is required to set in motion a proceeding looking to an ascertainment and adjudication of all rights to the waters of that stream. Every material step in the proceeding is to be attended with notice and an opportunity to be heard, the adequacy of which is manifest. In the beginning each claimant is required to present to the division superintendent a sworn statement of his claim, show-

# PRETTY FACE WORTH MONEY



Mae Burns

No foreign prince ever called Mae Burns the prettiest girl in America, but a few years ago she discovered she wasn't altogether had looking and decided her face would be her fortune. She posed in a fashion show

and hats and frocks she wore became famous. Now she is called the "best fashion model in the country." She is also the best paid model and some business men might envy her her income.

ing its nature, inception, and extent, and all the particulars upon which it is based. These statements are to be exposed to public inspection, so that every claimant may determine whether there is occasion for him to oppose or contest the claims of others. The state engineer, or a qualified assistant, is to measure the capacity of the stream, the carrying capacity of the stream, the land irrigated or susceptible of irrigation from each ditch, and also to take such other observations as may be essential to a proper understanding of the claims involved, a report of all of which is to be made in writing. Any claimant desiring to contest the claim of another may present to the division superintendent a sworn statement showing the grounds of contest, and obtain a hearing before that officer, at which the parties may present whatever evidence they have, and may secure the attendance of witnesses by compulsory process. After the evidence in the contests is taken, it and the sworn statements of the several claimants, with the report of the engineer's measurements and observations, are to be laid before the board—the statements and the report both being regarded as evidence appropriate to be considered. The board is then to examine all the evidence, make findings of fact therefrom, enter an order embodying the findings and provisionally determining the relative rights of the several claimants, and transmit the evidence and a copy of the order to the circuit court of the county wherein the stream or some part of it lies. Exceptions to the board's findings and order may be presented to the court, and in disposing of them the court is to follow as near as may be the practice prevailing in suits in equity. All parties in interest, including the board, as representing the state, are

to be fully heard. Further evidence may be taken by the court, or the matter may be remanded with directions that additional evidence be taken, and that the matter be again considered by the board, in which event the evidence and a copy of the further order of the board are to be transmitted to the court as in the first instance. In short, upon exceptions the court may re-examine the whole matter, should be adjudicated in the Federal court, and that the local statute was repugnant to the 14th Amendment. More than two hundred other claimants also appeared and submitted statements of their claims, all being described as higher up the stream than that of the plaintiff. When the statements were opened to public inspection many contests were initiated. Several of these were against the plaintiff's claim; a large number were by the plaintiff against other claims, and there were others in which, it is said, the plaintiff was not directly concerned. It was at this stage of the proceeding, and before any evidence was taken in any of the contests, that this suit was brought.

Upon the assumption (1) that the removal proceedings were effective, (2) that the proceeding before the board is substantially identical with the pending suits and (3) that that proceeding is essentially judicial in its nature, the plaintiff insists that the continued prosecution of the proceeding before the board constitutes an inadmissible interference with the district court's jurisdiction, and that this jurisdiction should be maintained and protected by an appropriate injunction. The insistence must be overruled, because the assumption upon which it rests cannot be indulged.

Nothing was accomplished by the removal proceedings. The district court did not take jurisdiction over them, but on the contrary, by its remanding order, adjudged that they were unauthorized. That order is not subject to review, either directly or indirectly, but is final and conclusive.

1. An order of a Federal district court, remanding a cause to a state court, is not subject to review by the Federal Supreme Court, either directly or indirectly.

2. The proceeding before the State Water Board, authorized by 3 L. O. L., tit. 43, chap. 6, Laws 1913, chaps. 82, 86, and 97, looking to the complete ascertainment and adjudication of the relative rights of all the claimants to the waters of a stream for irrigation and other beneficial purposes, is so essentially different from pending private suits between a few only of such claimants, previously begun in a Federal court, to restrain alleged encroachments upon plaintiff's rights in the water of the stream, as to preclude the application of the rule that where the same matter is brought before courts of competent jurisdiction, the one first obtaining jurisdiction will retain it until the controversy is determined, to the entire exclusion of the other, and will maintain and protect its jurisdiction by an appropriate injunction.

Law points decided by the court in this case follow:

3. The Federal Supreme Court will accept the view of the highest state court, the necessary result of the highest court's construction of a state statute, that the proceeding authorized and controlled by 3 L. O. L., tit. 43, chap. 6, Laws 1913, chaps. 82, 86, and 97, for the determination of the relative rights of all the claimants to the water of the stream for irrigation or other beneficial purposes, is, while pending before the State Water Board, merely preliminary and administrative, not judicial.

4. A claimant to rights in the waters of a stream is not deprived of property without due process of law, contrary to U. S. Const., 14th Amend., because, in the preliminary administrative proceeding before the State Water Board, initiated under 3 L. O. L., tit. 43, chap. 6, Laws 1913, chaps. 82, 86, and 97, to determine the relative rights of all the claimants to the water of the stream for irrigation and other beneficial purposes, he is

required, at his own expense, notwithstanding the inconclusiveness of the board's findings and order, to assert and prove his claim before the board, and to pay for having it considered, a fee of 15 cents per acre for the first 100 acres, 5 cents per acre for the next 900 acres, and 1 cent per acre for any excess over 1,000 acres,—all under penalty of forfeiting his claim if he refuses,—where all the evidence laid before the board goes before the court on final hearing, there to be accorded its proper weight and value.

5. The proceedings before the State Water Board authorized and controlled by 3 L. O. L., tit. 43, chap. 6, Laws 1913, chaps. 82, 86, and 97, for the purpose of determining the relative rights of all the claimants to the water of a stream for irrigation and other beneficial purposes, are not wanting in due process of law because the sworn statements of claimants are taken ex parte in the first instance, and the state engineer's report is accepted, though not sworn to by him, as prima facie evidence, where claimants' statements are open to public inspection, opportunity is given for contesting them, and upon the hearing of the contest, witnesses may be examined, including those making the statements, and any appropriate evidence may be produced, and where the measurements and examinations shown in the engineer's report are made and reported in the discharge of his official duties and under sanction of his oath of office, and timely notice of the date when they are to begin is given to all claimants.

6. The requirement of 3 L. O. L., tit. 43, chap. 6, Laws 1913, chaps. 82, 86, 97, that, pending final adjudication by the court, the waters of a stream shall be distributed to the various claimants according to the administrative order of the State Water Board unless a suitable bond is given to stay the operation of such order, is not wanting in due process of law, where the order is made only after adequate notice and full opportunity to be heard.

## NEIGHBORLY ADVICE.

Freely Given by a La Grande Citizen.

When one has suffered tortures from a bad back and found relief from the aches and pains, that person's advice is of untold value to friends and neighbors. The following neighborly advice comes from a La Grande resident.

Mrs. F. Burgess, 1405 Ninth St., La Grande, says: "I was subject to lumbago. At times I could hardly get about and the pain in my back was so severe when I got down, I could hardly straighten up. Sharp pains, like a knife sticking in my back, took away my breath for a minute. Doan's Kidney Pills were recommended so highly that I got a box and found them beneficial. Four boxes permanently cured me of lumbago and since then, I have never had any signs of backache. I could not advise anyone to take a better medicine for lumbago than Doan's Kidney Pills." Price 50c at all dealers. Don't simply ask for a kidney remedy—get Doan's Kidney Pills—the same that Mrs. Burgess had. Foster-Milburn Co., Props, Buffalo, N. Y.—Adv.

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THE DIAMOND BRAND.  
Largest Ask Your Druggist for Chichester's Diamond Brand Pills in Red and Gold metallic boxes, sealed with Blue Ribbon. Take no other. Buy of your Druggist. Ask for CHICHESTER'S PILLS. Always Reliable. Sold by DRUGGISTS EVERYWHERE.

# FLOUR HISTORY SHOWS WIDE RANGE OF PRICES

Flour sold in Baker in November, 1882, for \$12 a barrel and in some of the eminent localities it could hardly be procured at any price.

In the late fall of 1882 Theodore F. Miner, a partner with the late W. J. Snodgrass went to Weston where the 'Snodgrass' Bros., including ex-State Senator George Proebstel, operated a flouring mill and who had on hand 4000 barrels which they offered to sell to Mr. Miner for \$4.50 per barrel. The only thing that stopped the deal was that Mr. Miner was not sure he could get teams to haul the flour over the mountains by way of the Thomas & Ruckles road to Grande Ronde. Had he completed the deal he could have realized within two months a profit of one hundred per cent, or about \$9000 on the deal.

Mr. Miner was a very unique character in many ways. He came up to the old town of La Grande from Portland to go into partnership with W. J. Snodgrass in the mercantile business. While he was a resident of Portland he was a member of the old baseball team managed by Jos. Buchtel, whose demise occurred a few days ago. Mr. Miner was a distinctive member of the early baseball aggregation from the fact that he wore glasses and filled the position of back-stop—a thing that would not be attempted in these days.

The partnership in the firm of Snodgrass & Miner terminated after a very few years and Mr. Miner went east and soon thereafter was associated with the advertising firm of N. W. Ayer & Co., of Philadelphia. To Mr. Miner is accredited the origin of the celebrated trade-mark 'Uneeda' biscuit for which he received a large sum of money.

Twenty-Four Years Ago (From the Old Files)

Miss Rosa Sommer, the second daughter of Mr. and Mrs. A. Sommer, and Leopold Rosenthal were married in Portland last Sunday.

The track of the Union railway from the depot to the corporate limits has been finished. The balance of the material is expected to arrive in a short time when the road will soon be in readiness for operation.

J. S. Clark has completed arrangements for the purchase and handling of grain both at La Grande and Alice.

The 80-horse power engine and boiler for the Alliance mill arrived this week. The balance of the machinery is expected in La Grande by the 15th of September.

## BATHES PIGS TWICE DAILY

Yet Neighbors Say Animals Are Not Kept Clean

New York, Aug. 15.—Spotless town has been found. It is North Bergen, N. J.

Neighbors of Louis Tracass, of No. 675 Hillside Place complained to the Board of Health that he did not keep his five little pigs in "clean and sanitary condition."

Tracass appeared before the board to defend himself. With an aggrieved tone, he told of his sanitary pre-

cautions. "I give those pigs a bath every morning," he said, "and my wife bathes them every evening. What more do you want? Should I get up in the middle of the night and wash them again?" "How do you bathe them?" was asked. "In a tub," said Tracass. The Board of Health took the case under advisement.

## MODART CORSETS



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This Name Should Mean a Great Deal To You

THE MODART Corset has attained a degree of popularity that tells very plainly the story of appreciative MODART wearers.

Its style—its graceful lines—the poise it gives its wearers—the comfort—the exquisite materials—all spell satisfaction to the purchaser.

All MODARTS are created by Jennings—generally accounted the foremost figure in the world of corset designing.

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Pauline Lederle  
Sommer Hotel Bldg.

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We repeat that Maxwell cars have greater horsepower, per pound of weight, than any car built.

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