THE MORNING OREGONIAN, MONDAY, NOVEMBER 17, 1902.

REPLACE JESTING WITH THOUGHT ON IRRIGATION.

IT IS TIME TO WAKE UP

One Who Knows Tells Something That Will Be Useful for Oregenians to Ponder.

The increasing interest manifested in the subject of irrigation in Oregon is timely. Too long have we jested about the abundance of our water supply-and the abundance of our witer supporting allowed streams of gold to run idly to the sea. Too long we have laughed at the ig-norance of Eastern people in regard to Oregon, and yet the resources of our state are absolutely unknown to ninetenths of its own citizens-doubtless their full extent is not known to any. Too long we have slept to dream of wealth, while fortunes rolled by unheeded. It is time to replace jesting with sober thought. It is time to cease laughing at the ignorance of others, and remove a portion of our own -time to "take stock" and find out what we have. It is time to rouse from dreaming and begin to lay hold of our oppor-tunities. It is time for us to comprehend, for one thing, that our water supply is orth more than all of our gold mines, valuable as these are; worth more than all our lumber, vast as our resources are in this respect; worth more than all our farms as they exist today. Water in Cal-Hornla for irrigating purposes is worth from \$10 to \$45 per miner's inch per year. The time is not far distant when water in many parts of Oregon will be equally valuable. At these rates, many of our small-er streams would be worth from \$250,000 to \$1,000,000 each per year, while the larger streams would run far into the millions. Added to this should be the in-creased value of the land irrigated, which increase in other states has been in a few years from nothing to \$100, or even \$1000. per acre.

Further than this, most of our streams have such amounts of fail in their upper reaches that the water can be used over and over again for power purposes, before reaching the place of diversion for irrigation. For example, the McKenzle River has a fall of more than 1000 feet in a dis-tance of 60 miles before emerging from its gorge into the valley. It would require but little engineering skill to get 100,000 horsepower out of this stream alone, by installing batteries of turbines at various points, while the total horse-power of the river is probably 10 to 20 times that amount. The McKenzie is not a large river, and its fail is not great, as rivers go in Oregon, and it will easily appear that the combined horsepower of Oregon streams is something tremendous. The amount that is easily available almost passes conception. With the late improved methods of transmitting electricity over long distances, power in unquantities can be taken from its mountain sources to any part of the state where it is needed. The yearly value of Oregon's water power would buy a king-

It would be visionary in the extreme to suppose that all this latent wealth can be made available in any short time. Some available in any short time. Some of it-it is to be hoped a large and rapidly increased portion-will soon be utilized. The use of water for power I shall not further discuss at this time, but its use for irrigation presents a few problems of the highest import, and these ought to be considered very early, before we have embarked in any extensive enterprises. Delay in their consideration can only enormous litigation and loss of CRUSE money, as other states have found out.

### Water Rights.

Perhaps the most important problem presented is the question of water rights. Who shall own the water? The paramount importance of this question arises from the fact that nowhere in the arid region is there water enough to irrigate all the land. Some scheme must be devised to apportion the water justly to the lands which it is to serve, until the water of the stream is all apportioned, and then to stop all further appropriations from that stream, so that the first users shall be secure in their rights against usurpation by newcomers. Neglect of this precau-tion has brought disaster of greater or less magnitude to every state where irrigation has been attempted. California has suffered most in this respect, and her bitter experience is vastly instructive ns a warning. For a generation the courts of California have attempted in the absence of appropriate legislation to justify the use of water for irrigation, at the same time holding to the English common law doctrine of riparian rights. The two are of course absolutely incom-patible, and the courts in attempting to operate them together have in effect usurped the functions of the Legislature-they have in fact evolved a new doctrine which is not the common law and also is not based upon any state statute. This anomalous condition, together with other contributory circumstances, finally brought matters to such an intolerable pass that a number of représentative citizens petitioned the Government to undertake an investigation of the whole irriga-tion situation. This petition recites, among other things: "We can offer, we presume, examples of every form of evil which can be found in Anglo-Saxon dealings with water in arid and semi-arid districts. Great sums have been lost in irrigation enterprises. Still greater sums are endangered. Water titles are uncertain. The litigation is appalling. Even a cursory examination of the situation in California shows that these statements are not rhetorical exaggerations, but represent the truth only inadequately. The evils might have been foreseen; they were foreseen and pointed out. As early as 1878, Major J. W. Powell, then Director of the United States Geo-logical Survey, prepared a monograph entitled, "Lands of the Arid Region." py of this lies before me, and I read: Thus it is that a custom is springing copy up in the arid region which may or may not have color of authority in statutory or common law; on this I do not wish to express an opinion; but certain it is that reasonable interest on the capital invested water rights are practically being severed from the natural channels of the streams; and this must be done. In the change, it is to be feared that water rights will in many cases be separated from all land the company should be authorized to do trights, as the system is now forming. If this fear is not groundless, to the extent the term of years, and forfeitable at many cases be separated with the system is now forming. If this fear is not groundless, to the extent that such a separation is secured, water will become a property independent of the land, and this property will gradually be absorbed by a few. Monopolies of water will be secured, and the whole ag-tenture of the country will be tributary

This is not a scarecrow; It is not a "theory." as it was when Major Powell wrote; it is a fearful reality, and Oregon will face the same condition 20 years from now, unless she provides proper laws at how, unless Experience in California and other states has proved beyond doubt that the common law and the courts alone are not adequate to the emergency. In saying this, I do not wish to be understood as depreciating the courts. Imperfect as they often are, our courts of justice rep-resent to my mind the highest institution which man has yet produced. But it is not their function to make laws, and they not their function to make laws, and they ought not to be compelled to do so, as they virtually have been in California, in order to permit irrigation to be prac-ticed at all. The attempt to evolve a doctrine of water rights adapted to an irrigating region by the slow and painful process of court decisions based upon the common law is the most expensive, the most foolish, the most disastrous piece of business which any commonwealth has ever undertaken. May Oregon be wiser

of legislation. The lack of proper laws

governing water titles is held response

in her day and generation than her sister on the South. The problem is slightly complicated by the uses of water for power and mining purposes, but these difficulties can readlly be adjusted. The main problem re-lates to irrigation, and at first sight it seems rather remarkable that the experts who have studied the subject, from Major Powell on down, have arrived at substantially the same conclusion; and when it is known that the states lying wholly within the arid region, and also several of the British possessions, have adopted views largely identical, the unanimity apviews largely identical, the unanimity ap-pears still more surprising. But when the facts are once understood, the surprise disappears, and it is difficult to see how a rational mind could draw any other conclusion. The essential elements of the conclusions referred to may be briefly stated as follows:

First-The English common law doctrine of riparian rights should be abrogated in every state where irrigation is fo be practiced. This is regarded as a fundamental necessity, prerequisite to the adoption of any rational system of irri-gation laws. The doctrine has already been abrogated in every state and ter-ritory lying wholly within the arid region, namely, Colorado, Wyoming, Montana, Idaho, Utah, Nevada, Arizona and New Mexico; and also in the British provinces of Victoria and New South Wales, in Australia, and in the Northwest Territorles of Canada.

Second-The water of any stream which is to be used for irrigation should be ap-portioned by a legally constituted authority in definite amounts to the lands which are to be served; and thenceforth the right to the use of the water should inhere in the particular tracts of lands to which it has been apportioned, and water titles should be made inseparable from land titles.

Of course, after the whole amount of the normal minimum flow of the stream has been apportioned in the order of actual settlement and use, no further claims to the water of that stream should be recognized. But as experience and skill in irrigation increase and improved methods of agriculture are adopted, the amount of water required for each tract will become less, and should be made less, so that apportionments to new lands may be made from time to time. Reasons for these conclusions are admit-

above referred to. I shall not go into them in detail, but I wish to call attention again ably set forth in the report of the experts to the quotation above cited from Major Powell, and to add one from the report of the experts in California:

"The relative merits of laws which at-tach appropriations to the land and those which, like California, make the ditch or canal-owner the appropriator, is matter of theory or conjecture. In not a In every country where rights attach to the land ir. rigators are prosperous and peace prevails, In countries where control of water and ownership of land are separated, controversies and abuses abound. There is no exception. The situation in Wyoming as contrasted with that in California shows that the arid West is not destined to furnish one. If human experience has any value, we ought to heed its lessons. Under this view no person or corporation can become the "owner" of water for ir-rigation-the water belongs to the land, and the owner of the land has a perpetual right to the use of the water. Irrigation companies ought not to be allowed to own the water which runs in their ditches, and ought not to be allowed for one mo they ment to suppose or assert that they do own it or have any control whatever over it. The right to the use of water for irrigation ought no more to be dependent upon the permission of an irrigation com-pany than the right to use air for breath It is, of course, to be expected that attempts will be made to keep the subject of water rights out of sight-to smother Its consideration, if possible; but if the people of Oregon allow themselves to be hoodwinked in this matter, they will buy their experience at the expense of millions of dollars squandered in litigation, a strangled industry and endless contentions and hatreds. It will be a sorry day for Oregon if water rights and land titles are allowed to part company. "If human experience



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work in practice. We have not only the traila, and Dennis for Canada? The eyes and to various investigations made by work in practice. We have not only the experience of California as a terrible warn-ing, but we have the experience of Colo-rado, Wyoming. Australia and Canada as guides. The irrigation laws of Wyoming are better than those of any other state in the Union, and the irrigation act of the Northwest Territories of Canada is in many of its details superior to anything bitherto enacted. Oregon can profit im-giant but we have in our keeping an industry in its infancy.

row. It is Mr. Folk's intention to make an effort to try Gutke. It is believed coun-sel for defendants will try to get more

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MORE BOODLE TRIALS.

Prosecution Ready to Take Up St. Louis Gang.

ST. LOUIS, Nov. 16 .- Circuit Attorney Folk, who has returned from Columbia, Mo., where he prosecuted the case against Ed Butler, who was convicted of attempted bribery, is preparing for the trial of other alleged boodlers next week. The cases against Charles A. Gutke, Ted Albright, Adolph Madera, Charles J. Albright, Adolph Madera, Denny, Emil Hartmann, John A. Sheridan and Julius Lehmann, former Delegates, on the charge of bribery in connection with the suburban street railway fran-chise deal, are docketed for trial tomor-

Allen, a black bitch owned by C. E. Root, the car, the bullet striking Mr. Tate ir of Richland, Minn., beating Anheuser Turner and Lawes' Quicksand. the forehead. His home was at Cleburne where he leaves a widow and child. On circumstantial evidence, Sheriff Anderson has arrested Tom Futrell, a freight conductor

# Sentenced Murderer Lynched. ELIZABETHTOWN, Ky., Nov. 15 .-

Harlan Buckles, who was yesterday sen-tenced to life imprisonment for the mur-der of Robert L. Reid, Deputy Marshal

was hanged by a mob early this morning. The mob consisted of 75 men, some of whom are supposed to have come from Larue County. Buckles was taken to the Courthouse yard and hanged to a tree.

GENERAL BLISS' MISSION.

ome Cubans Fear, but Most of Them Are Elated.

HAVANA, Nov. 16 .- Commenting on the mission of General Tasker Bilss to inves-tigate the industrial situation and the fiscal possibilities of Cuba, the Discus-

"The right to use water should inhere rights should go with land titles." The whole of the last sentence Major

Powell printed in italics. The complete and extraordinary ful-

filiment of this prophetic fearin California has been recounted in a volume of 400 must pass ought not to be allowed to put quarto pages embodying the reports of nine experts appointed. In accordance with the above mentioned petition, to in-vestigate the situation. Water rights have been gobbled up by the great esbeen gobbled up by the great estates, by corporations, companies and intates, by corporations, companies and in dividuals. The supposed owners of the water fight each other incessantly in the courts, they blow up each other's dams courts, they blow up each other's dams dividuals. and headworks with dynamite; contracts stipulate the delivery of water, unless prevented by "unlawful invasion or unwarranted interruption": water rights in some cases have been maintained by the us in no doubt us to their probable action aid of "gentiemen from Arizona" who are handy with pocket irons; irrigation in "cinch." handy some places is stopped, because nobady knows who has a right to the water, and

has any value, we ought to heed its les-

### Function of Irrigation Companies.

What, then, is the function of the irri-gation company? The irrigation company is a common carrier, just like a railroad company, and its business is simply and solely to transport water and deliver it to the lands to which it belongs. Those states have blundered grievously which have regarded irrigation companies as mercantile concerns to traffic in water. It is a fundamentally wrong classification; they are not mercantile concerns; they belong strictly to the transportation division of industry, and they have no an-more right to make merchandise of the water which they carry than a railroad

or other common carrier has to make mer-chandise of the freight which it carries. For transporting the water the company is entitled to charge just rates-freight rates, if you please-which will repay a in the construction of the canal, head-works, and other necessary appurtenances,

and irrigation expert: "About the heaviest expense incurred the land to be irrigated, and water in Western (irrigation) works is the charge made for the right of way and for the condemnation of reservoir sites."

The short-sighted, pig-headedness and rapacity to often manifested by land-owners through whose property the canal penses, must finally be paid by the irri-

gators. compelled to accept a reasonable sum for damages, but can demand any amount they please, and it must be paid or the us in no doubt as to their probable action

#### State Control.

so it runs to waste and people are leav-ing. On a single small stream it is stated that the legally recorded claims to the waters amount in the aggregate to doubt "litigation is appalling" It is ex-pressly stated that the courts are not to blame for the state of affairs; they have done the best they could in the absence best they could in the absence problems and have evolved systems which

hitherto enacted. Oregon can profit im- giant. But it must be done wisely. mensely by these, but she cannot afford to allow her water interests to become enmeshed in such an interminable tangle of | is the condition for which we must prolitigation as California has. Sooner or later the state will be compelled to lay hold of the matter with a strong hand, and it will never be so easy as now.

### Remarks on the Foregoing.

I cannot hope that in the foregoing para. graphs I have adequately expressed the views of the eminent men who, having comprehended the experience of the past, and, foreseeing the evils of the future have wrought out just and beneficent laws for the lands which they served-I can only hope that I have not misrepresented them. I have refrained from going into details, because my purpose was not to outline a definite irrigation law, but to set forth the basic principles which should lie at the foundation of any intelligent system of legislation. Once more hear those prin-

The doctrine of riparian rights should be abrogated. Water titles should be inseparably joined to land titles. Private ownership and traffic in water should be made impossible.

Irrigation companies should be classed as common carriers, and not as mercantile concerns. The state should stand sponsor for the equitable distribution of water, and for the

maintenance of water rights, the same as with respect to land titles, It is believed that experience amply jus.

tifies the statement that any system of legislation or any lack of legislation by which these principles are ignored will necessarily lead to contentions, abuses, even violence, and partial or complete strangulation of the irrigation industry. With respect to California, perhaps it should be stated, to avoid any misunder-

standing, that she has profited immensely by her irrigation enterprises, in spite of her many disasters and present entanglement. But it is agreed by all in a position to know that the state is losing great sums annually by the retardation of development which would be possible under wise laws. The result merely shows the Inh power of irrigation-it does not justify its fetters.

### National vs. Private Enterprise.

It is not my desire to engage in the current controversy between the advocates of private enterprise and the advocates of Na-tional irrigation schemes further than this: First, to remark that under proper regu-lation, which we do not now possess. I think there is ample room for private enterprise, intelligence and push; and, sec-ond to note that the opportunity for fraud under the Carey law is precisely the same as under our timber laws. We observe that "actual settlers" commute, pay up and sell out to a syndicate by the scores. What shall we say of the man who smil-ingly tells that these things will not happen under the Carey law? Let us be char-

itable; let us not call him harsh names let us call him a chuckle-headed chump. Legislation Needed.

I appeal to the people of Oregon, and particularly to the citizens of Eastern Ore-gon, to rise to their opportunity and to demand of the Legislature the enactment of an enlightened code of irrigation laws. Why should we flounder in the quagmire of laws passed before the difficulties and possibilities of irrigation were known? Why not have a code based upon present knowledge and anticipation of the future? What do we have a Legislature for but to pars enlightened laws?

Vast as our water resources are, there is not enough to irrigate half our arid land. This vide. Are we equal to the emergency? E. H. M'ALISTER.

University of Oregon, Nov. 14, 1902.

# RUBINO'S ITALIAN RECORD

### Was Condemned for Stealing and Writing Subversive Article.

ROME, Nov. 16 .- The Ministry of the Interior has established the identity of the assailant of King Leopold. His name is Gennerro Rubino, and he is described in their records as an advanced Socialist He was condemned to a long term of imprisonment for stealing at Milan in 1803, but he effected his escape to Eng-land, where he is supposed to have im-bibed his anarchistic principles. His His father was a patriotic communical councillor, but Rubino, while still serving in the army, was condemned to five years' detention for writing a subversive news-paper article. These are the only crim-inal records that have been found against him. Since leaving Italy he has resided in Scotland and England, first in Glas-gow and afterward in London. Some years ago he was accused of treachery by his anarchist friends and expelled from their ranks.

The pope, King Victor Emmanuel and Premier Zanardelii have sent telegrams of congratulation to the King on his escape from assassination. It appears that Rubino has a brother who is also an an-archist. His father fought with distinction in the Italian war for independ-

## WHY RUBINO SELECTED LEGPOLD. Because of Inhuman Teatment

# His Daughter.

BRUSSELS, Nov. 16 .- According to some reports, Rubino, in the course of his ex-amination before the magistrate, de-clared that he selected King Leopold for his attack on account of His Majesty's inhuman conduct toward his daughter, Princess Stephanic, at the time of her mother's death, and he also wished to show to the anarchists in London, who doubted his loyalty, that while they only talked he acted. He would have killed King Edward, he added, but for the strong feeling of the English people in favor of the monarch.

### Secretary Hay's Congratulations.

WASHINGTON, Nov. 16 .- Secretary Hay called at the Belgian Legation today to express to the officials there the regret over the attempt on the life of the King of Belgium yesterday, and to extend the ongratulations of the people of this country over the King's escape from harm.

## LOOKING INTO GERMAN TRUSTS.

### Government Commission to Make Exheastive Inquiry.

BERLIN, Nov. 16 .- The government commission appointed to inquire into a kartels, or syndicates, that control or largely affect so many departments of inquiries in Germany is composed of production in Germany is composed of four professors, eight members of the Reichatag and 19 business men. Home Secretary Poadowsky, in explaining the range which the commission's researches are expected to take, said he would lay before them material which had been collected in the United States. He allud-Is there no man who can do for Oregon what Mead and Warren have done for Wyoming, what Deakin has done for Aus-taken by the Congressional committee

material, domestic and foreign prices and the economics of production affected. It is not unlikely that the government will use the report as a basis for proposing legislation providing for national suppression of combinations of capital.

### St. Louis Dog Races.

ST. LOUIS, Nov. 16.-Despite the heavy rain that fell all day, the coursing at Del-mar race track was continued today and Bullet Came Through Rear of Carthe second and fourth rounds and final

the second and fourth rounds and final in the Louisiana Purchase stakes for all age greyhounds was run. Final: J. Blake Sons' Dexter E, beat Allen & Wilson's Barefoot Boy and won the stake. The American Derby, a classic stake for greyhound pupples, was won by Lady

time, but Mr. Folk is anxious to proceed with the trial of one of the defendants. Whether Butler will be tried at Fulton on the charge of bribery in the lighting deal before the higher courts have passed upon the case trigd at Columbia last week rests with Judge Hockady. To Mr. Folk Judge Hockady stated that he had tried defendants on two charges before the first was finally settled, and he may decide that Butler can be tried legally at Fuiton before the Columbia case is finally settled.

RAILROAD MAN KILLED.

Arrest Made.

sion intimates that the appearance of General Bliss will be likely to complicate matters and will give color to the dominant fear of a restoration of military gov ernment. The newspaper recognizes the General's ability in questions relating tr the tariff, but expresses the belief that h he must come to Cuba he would come to consult with Minister Squiers and not as a Minister Plenipotentiary. Cuban mer chants and planters are elated at the news of General Bliss' coming and are hopeful that the result will be speedy solution of the commercial treaty negotions.



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