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Seventeen Years' Practice in Portland

PRIOR HOLDERS OF WATER RIGHTS WIN

Lawyers Say Burnett's Decision Recognizes Claims of Initial Appropriator.

RIPARIAN OWNER SECOND

Surplus Flow of Stream It Is Held May Be Taken by Settler on Upper Part If It Is Used for Beneficial Purposes.

Until they have had an opportunity to read the opinion of George H. Burnett, Associate Justice of the Oregon Supreme Court in the case of Caviness against the La Grande Irrigation Company, rendered this week, Portland lawyers acquainted with water right questions are not prepared to discuss the probable effect of that decision as to the appropriation of water from streams in this state.

It is the generally accepted opinion, however, that the decision of Justice Burnett recognizes and supports the doctrine of prior appropriation against the contention of riparian ownership. In effect, the most recent of Oregon's appellate tribunals is to do away with the question of riparian ownership in favor of the prior appropriator.

While a member of the Supreme Court, W. R. King, of this city, in the case of Huff against Porter, rendered an opinion holding that no riparian rights attached to land settled upon subsequent to March 3, 1877. The decision of Justice Burnett applies to and affects only those lands that were settled upon prior to the act of 1877.

Appropriator Is Favored.
In the case decided by Justice Burnett, the appellant had appropriated water from a certain stream and with the consent of a land owner, holding land between the property of the appellant and the stream involved in the controversy, had conveyed it across the other's land and used it for irrigation purposes. According to the decision of Justice Burnett, the appropriator of the water in this case was entitled to the appropriation as against the man located on the lower part of the stream from which the water was taken.

The decision of Justice Burnett does not undertake to deny to settlers along any stream the right to the use of an adequate supply of the flow of that stream for domestic and livestock purposes but it does hold that aside from this consideration, which cannot be denied settlers on the lower river, the surplus flow of a stream may be appropriated by a settler on the upper part of the river so long as the water so appropriated is applied for beneficial purposes. It is a recognized principle of law in this state, that a sufficient supply of water must descend the length of a stream to furnish settlers owning property adjoining that stream with an ample supply for domestic and livestock purposes before the question of the application of the surplus flow of the stream for irrigation purposes enters into the question.

Riparian Ownership Is Fettered.
The question of riparian ownership, said W. R. King, ex-Justice of the Supreme Court, and an authority on questions affecting water litigation, "must be recognized to the extent that sufficient water must flow the entire length of a stream to supply all land owners along the stream with a sufficient quantity for domestic and livestock purposes. When this has been

provided, then the surplus, according to Justice Burnett's decision, is available for appropriation by any settler so long as the water so appropriated is used for a beneficial purpose, regardless of the contention of so-called riparian owners on the lower part of the stream. "This is the determination of the question to which the authorities of the state having the matter of distribution of the waters of the various streams must come eventually. It is settling perhaps two or three years in advance of the times but it will be found to be the only feasible solution to a problem that has confronted and perplexed the authorities of this state for some time."

Other lawyers who have had more or less experience in the trial of water-right suits in the courts do not agree with Mr. King in his estimate of Justice Burnett's decision. Among them are Jay Bowerman, who has tried a number of cases involving the question of the right of distribution of water in the streams of Eastern Oregon.

Bowerman Gives Statement.
"Under the ordinary accepted idea of riparian rights in the matter of irrigation, all riparian land has an equal right to the flow of the waters in a stream so that each acre is entitled to its proportionate part of the total flow, having regard, of course, to the necessities of the different tracts," said Mr. Bowerman yesterday. "In other words, the owners of riparian lands have been considered tenants in common in the flow of a stream, each owning a portion of all the water equivalent to his portion of all of the land, having regard, of course, to the requirements of the different tracts."

"This rule has had only a slight application in the portions of the state for the reason that it was inapplicable under conditions in an irrigated country. "Under the riparian theory, the last settler on a stream has a right equal to that of the first settler, although the supply of water may be entirely inadequate for the needs of all the land, but the water, in other words, it is the riparian owner. In 1877 the Government, as riparian owner, by an act of Congress, authorized a settler to take all of the waters of any stream on public lands and divert and carry the same away to be used for certain purposes, including irrigation. This act sanctioned what is known as the doctrine of prior appropriation. Under it a person gains an absolute right to divert and use forever the amount of water necessary for the irrigation of his land."

New Settlers' Rights Secondary.
"When the water has been appropriated, diverted and applied to a beneficial purpose, under this theory the right to continue the use becomes a property right which can be protected. New settlers or new users take only the waters of the stream remaining after the requirements of previous appropriators have been supplied. "Many decisions heretofore have held that no appropriation could be made which would take from a stream so much water that there would not be left a sufficient quantity to supply the requirements of riparian owners for every acre water rights to a question of priority and I am inclined to the opinion it is good law," said George F. Martin, yesterday. "As I understand the decision, it recognizes the rights of both the appropriator and the riparian user so long as the water that is taken is used for beneficial purposes. The riparian owner has the undivided title to a sufficient supply of water from a stream to serve his domestic and livestock requirements and the surplus flow is subject to appropriation in order of priority for irrigation or other purposes. This gives the riparian owner and the non-riparian appropriator equal opportunity for appropriating the flow of a stream so long as the water is applied for beneficial purposes."

A compact sound-producing machine for use in the field of a worthy and useful life and they taught the people of the East many things they did not know relative to the advantages of life in the West and the result is going to be felt far years to come. "Each Governor on the trip had a different line of thought to express and Governor West, of Oregon, always told in a forceful way of the great timber resources of his state, of the advantages derived from the seaboard traffic and

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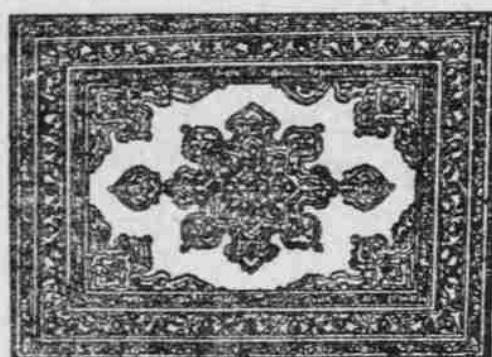
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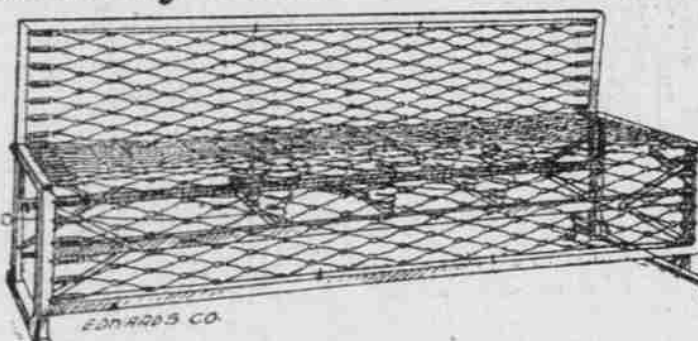


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\$16 Brussels Rugs at \$11.65
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BRADY TELLS OF TRIP

GOVERNORS' SPECIAL ADVISED WEST HE SAYS.

Tour of East Declared to Have Shown Need of Co-operation Among Coast States.

FOCATELLO, Idaho, Dec. 28.—(Special.)—Ex-Governor James H. Brady, originator and guiding spirit of the famous "Governors' Special" train, returned today to his home in this city. "I traveled more than 26,000 miles in connection with the running of the Western Governors' train," he said. "I made two trips across the continent, visited every Western State, and made different trips to San Francisco, Salt Lake, Boise, Spokane, Helena, Butte, Omaha, Denver and St. Paul. "The train visited Chicago, Buffalo, New York City, Washington, Baltimore, Philadelphia, Harrisburg, Pittsburgh, Columbus, Cleveland, Dayton, Cincinnati and other cities and returned to St. Paul with two more Governors than we started with."

"At the finish of the trip the Western Governors held a conference at St. Paul, where the results of the trip were cast up. This tour means that we come to know each other better and have come to realize the need of co-operation in the West, in order to secure that attention in the East and from the National Congress which the West deserves. I predict that in the future, regardless of politics, the Governors of the West will work together in harmony and that this will result in a greater advancement of the West in all ways. "Take it all in all, the Western Governors' special was a university on wheels with eight Governors as instructors, everyone of whom had graduated from the field of a worthy and useful life and they taught the people of the East many things they did not know relative to the advantages of life in the West and the result is going to be felt far years to come. "Each Governor on the trip had a different line of thought to express and Governor West, of Oregon, always told in a forceful way of the great timber resources of his state, of the advantages derived from the seaboard traffic and

of the Oregon system of civil government."

PELT BOUNTIES ARE LARGE

Trapper Gets \$145 for 30 Coyotes, 8 Bobcats and 5 Timber Wolves.

GOLDENDALE, Wash., Dec. 28.—(Special.)—Harry Yarnell, of Bickleton, Wash., who has devoted the past three months trapping coyotes and other animals on which there is a bounty, appeared at the County Auditor's office this morning with 30 coyotes, 8 bobcats and 5 timber wolves. For this collection he received \$145 bounty. Mr. Yarnell received about the same amount as bounty December 4. The state has paid him about \$500 bounty on coyotes this year, and it is estimated by stockmen in different parts of the county that their industry has been benefited to the amount of \$2000 by his work alone. Mr. Yarnell is a very successful trapper, and has collected about \$1000 worth of fur, which he will take to New York City.

Chehalis Flax Fiber Taken East.

CHEHALIS, Wash., Dec. 28.—(Special.)—Joseph Schuss, manager of the department store of Hartman & Nathan, will leave Tuesday on an extended

Eastern trip to New York and other centers on business. Mr. Schuss will take with him a number of samples of Chehalis flax fiber and its products and will visit several linen mills. It is hoped to find some one in the East who may become interested in the possibilities of linen manufacture in the Northwest at this place. It has been demonstrated beyond question that flax fiber of the highest quality can be grown here successfully.

GIFTS STOLEN ALLEGED

Chauffeur and Woman Accused of Theft After Display of Goods.

Display by an Oregon City mother of Christmas gifts from her daughter, made to the woman from whom they are alleged to have been stolen, led to the arrest of R. S. Johnson, a chauffeur, and Mrs. Mary Baldwin, 18 years old, by Detectives Coleman and Snow yesterday. The two were taken to Oregon City by a constable from that place to answer a charge of stealing a quantity of silverware and dress goods. The girl wife, who has been married before, is the daughter of Mrs. Naylor in Oregon City, to whom she presented a dress "pattern" at Christmas time. Mrs. Naylor displayed the gift to a neighbor, whose house had been robbed several months ago of various articles, including about 65 pounds of silverware. The woman said nothing at the time, but obtained a search warrant for the Naylor house, hoping to find the silver there also. It was not discovered. Detectives in this city were appealed to several weeks ago, and arrested Johnson, who was also charged with stealing automobile equipment here.

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