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that suit found certainly upon point that has arisen in this action. Its finding must control yours and you must abide by such finding, which, I instruct you, is final and conclusive alike upon the parties hereto, this jury, and this court, and they must be so treated by you under your oath as jurors." This instruction is erroneous, in that it leaves to the jury the construction of the findings of the circuit court. It was the duty of the court to construe these findings and explain to the jury their force, efficacy and application to the matters at bar.

Instruction No. 6, objected to, is as follows: "One of the provisions of plaintiff's 'Exhibit B,' which is the instrument executed by L. S. Kelsey, C. A. Dougherty, James Dalton and others, on the 10th day of October, 1909, reads as follows: 'and the said L. S. Kelsey shall have the right at any time and all times to pass his own water from other ditches through said ditch, and at any time use his own water therefrom.' I instruct you that the said stipulation is mutual; that is to say, all parties to that agreement have the right to pass their water through that ditch and no party to that agreement has the exclusive right. Under that stipulation each party must respect the rights of his co-workers in running his own water through that ditch. This stipulation does not give Mr. Kelsey or Mr. Dalton a right to run such a quantity of water for his own use into that ditch as would deprive any other party to it of the same right. Wherefore, if you find from the evidence, that the defendant caused damage to the plaintiff, by a disregard of plaintiff's rights to use water therefrom, the defendant would be liable therefor. I instruct you that no party to that agreement has the right to the exclusive control of the ditch mentioned in this agreement, or any part thereof, from its intake on North Powder River to the tap of the last party using water therefrom, but that each party must respect the rights of the others."

This instruction is misleading in that it seems to leave out of view defendant's prior right to use four feet of the water flowing through the Kelsey-Wilson ditch. It is true that such right is expressly recognized in other instructions but there is such an ambiguity here as was calculated to confuse the jury. Instruction No. 9 is as follows: "As to the Dalton Box: I instruct you that the plaintiff has no right to disturb it or lower the bed of the ditch at that point or above there or to fill in the ditch at the Hutchinson Slough, with more water than can be carried past the Dalton Box. Nor did Mr. Kelsey have any right to dam up that box and prevent any water from flowing through the same if there were other reasonable means available to him whereby he might use his water, if by so doing he would needlessly prevent plaintiff from getting his share of the water. If by opening the bottom of the dam in that box whereby the water could run through to plaintiff and by turning in enough water additional at the head of the ditch in North Powder River he could have procured a sufficient volume of water to have satisfied his needs and thus have avoided any injury to plaintiff, if plaintiff was injured, it was Mr. Kelsey's duty to have done so, and to have allowed water to go down to plaintiff. I do not mean to say that Mr. Kelsey did put a dam in the Dalton Box; that is a question for you to determine from the evidence." We think this instruction is correct.

It is plausibly contended that a different rule is laid down in the case of Carnes v. Dalton, — Or. —; 110 Pac. 176; but we do not so view that case. In that case it appears that, by reason of the dam in Powder River being out of repair, it was impossible for Carnes to get the quantity of water he was entitled to by reason of a prior appropriation without repairing or raising the dam. Dalton who was defendant in that case claimed the right to use the full amount of his subsequent appropriation, leaving the prior appropriator to rebuild to repair the dam in order to get the share to which he was entitled. The court properly held that Carnes was not required to do this, but, if there was sufficient water flowing at the head of the ditch to supply Carnes, that he was entitled to take it, leaving to the subsequent appropriator the duty of raising the dam, so as to turn more water into the ditch. What is said by the court in reference to the right of Carnes and Kelsey to use the water then flowing in the ditch must be construed as applying to the conditions there found to exist. In the case at bar conditions are different. There is evidence tending to show that there was an abundant supply of water at the head of the ditch for all parties and it, by simply lifting the headgate, Kelsey could secure his supply, without using that already turned in by

plaintiff, he should have done so. Then if the ditch would not carry enough to give him his four feet of water and also supply Dalton, he should have the right to be first served, or if what Dalton had previously turned in was all that the ditch would contain, Kelsey would have the right to use the whole of it. We do not understand the instruction to assert any different doctrine. It follows from these views that the judgment of the lower court must be reversed with instructions to dismiss the first, second and third causes of action and retry the case upon the fourth cause.

Mr. Chief Justice Eakin took no part in the decision of this case. WILL MANDAMUS RAILROAD COMPANY Attorney-General Crawford is preparing legal papers looking to the mandamus of the Corvallis & Eastern Railroad Company, to compel it to build a depot at Lyons, and they will be filed with the proper court in the course of a few days. Last year the Oregon Railroad Commission acting upon petitions made by citizens, and after a hearing on the subject, ordered the company to build a suitable depot at Lyons. The company refused, and the attorney-general brought a suit against it, and recovered a penalty of \$250 for violation of the order. The company then appealed to the supreme court, and the case is now pending before that tribunal.

The commission has now, with the view of securing immediate action, instructed the attorney-general to bring mandamus proceedings. Not a Word of Scandal Marred the call of a neighbor on Mrs. W. P. Spough, of Manville, Wyo., who said: "She told me Dr. King's New Life Pills had cured her of obstinate kidney trouble, and made her feel like a new woman." Easy but sure remedy for stomach, liver and kidney trouble. Only 25c at J. C. Perry's.

THIS IS CERTAIN. The Proof That Salem Readers Cannot Deny. What could furnish stronger evidence of the efficiency of any remedy than the test of time? Thousands of people testify that Doan's Kidney Pills cure permanently. Home endorsement should prove undoubtedly the merit of this remedy. Years ago your friends and neighbors testified to the relief they had derived from the use of Doan's Kidney Pills. They now confirm their testimonials. They say time has completed the test. A. J. Wood, 733 N. Front street, Salem, Oregon, says: "About two months ago I began to suffer from kidney and bladder trouble. The kidney secretions were too frequent and painful in passage and caused me much annoyance. I had often heard Doan's Kidney Pills highly recommended and thinking they might prove of benefit, I procured a box at Dr. Stone's Drug Store. I can say that the use of one box rid me of every symptom of kidney complaint. I strongly advise other kidney sufferers to give this remedy a trial. The above statement was given January 30, 1906, and was confirmed on November 20, 1909, by Mr. Wood. He said: "The statement I gave in 1906, publicly recommending Doan's Kidney Pills was correct. This remedy cured me of kidney trouble and I have had no return attack." For sale by all dealers. Price 50 cents. Foster-Milburn Co., Buffalo New York, sole agents for the United States. Remember the name—Doan's—and take no other.

A Dreadful Sight. To H. J. Barnum, of Freeville, N. Y., was the fever sore that had plagued his life for years in spite of many remedies he tried. At last he used Bucklen's Arnica Salve and wrote: "It has healed with scarcely a scar left." Heals burns, boils, eczema, cuts, bruises, swellings, corns and piles like magic. Only 25c at J. C. Perry's.

**Biliousness**  
"I have used your valuable Cascarets and I find them perfect. Couldn't do without them. I have used them for some time for indigestion and biliousness and am now completely cured. Recommend them to everyone. Once tried, you will never be without them in the family."—Edward A. Marx, Albany, N.Y.  
Pleasant, Palatable, Potent, Taste Good. Do Good. Never Slacks, Weakens or Grips. 25c, 50c, \$1.00. Never sold in bulk. The genuine label stamped C. C. C. Guaranteed to cure or your money back.  
**Salem Fence Works**  
Headquarters for Woven Wire Fencing, Hop Wire, Barb Wire, Poultry Netting, Shingles, Malthold Roofing, P. & B. and Ready Roofing. All at the lowest prices.  
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Ordinance No. 905. A bill for an ordinance providing for incurring an indebtedness to the amount of \$50,000.00 by the issuance and sale of bonds against the city of Salem Oregon, for the purpose of raising funds for the construction of necessary bridges within the city of Salem Oregon; providing for the term of said indebtedness, and the terms, denominations and interest of such bonds, and the manner of disposing of the same; and providing for submission of the proposition of incurring such indebtedness and the issuance of such bonds to the legal voters of the city of Salem at a special election to be called for such purpose, and matters kindred thereto. Be It Ordained by the Common Council of the City of Salem, Oregon:

Section 1. For the purpose of providing funds for the reconstruction of bridges at certain points on Mill creek where bridges were recently destroyed by floods, and constructing the other necessary bridges within the city of Salem, Oregon, the common council of said city is hereby authorized and empowered to incur an indebtedness by the sale and issuance of bonds as hereinafter provided, to the amount of \$50,000.00. Section 2. Such bonds shall be known and designated as "Salem municipal bridge bonds," and shall be issued in denominations not less than \$100.00 and not greater than \$100.00, upon a popular loan plan at a rate of interest not to exceed five (5) per cent. per annum; such bonds shall be payable within ten (10) years from the first day of June 1911; provided, the first day to take up and cancel such bonds, or any of such issue, upon the payment of the face value thereof, with accrued interest to the date of payment at any semi-annual interest payment period, at or after one (1) year from the date of such bond or bonds, shall be and is hereby vested in the city of Salem. In case the city so desires to redeem any of such bonds, a notice shall be published for five (5) consecutive issues in a daily newspaper of general circulation published in the city of Salem, Oregon, during the month preceding the interest payment period at which it is proposed to redeem such bond or bonds. Such notice shall also specify that on and after such interest payment period interest on such bond or bonds will cease, and such notice shall also describe the bond or bonds proposed to be redeemed by giving the date of issue and denomination thereof, and that the city proposes to redeem the same, which notice shall have the effect to stop the running of interest on such bond or bonds after such interest payment period.

Section 3. The principal and interest of said bonds shall be payable in gold coin of the United States of America, and the interest thereon shall be paid semi-annually on the first day of June and the first day of December of each year after date of issue, at the office of the treasurer of the city of Salem Oregon. Section 4. To each of said bonds shall be attached twenty (20) interest coupons, printed upon the margin of the paper upon which is printed the bond itself and representing the amounts of semi-annual interest to become due upon the said first days of June and December, consecutively succeeding the said date of issue, and pledging the payment at the times and place mentioned, and at the rate of interest agreed upon in the sale thereof. Such bonds shall be signed by the mayor of the city of Salem, Oregon and attested by the recorder of said city, and each bond shall bear the impress of the seal of the city of Salem, Oregon.

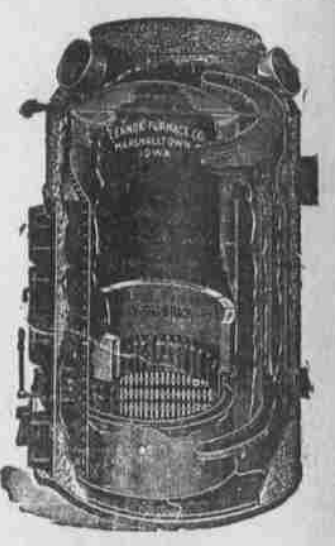
Section 5. All such bonds remaining unsubscribed for and unsold when the subscription books for the sale thereof shall have been duly closed shall be sold upon the open market to the highest and best bidder bidding for all of said bonds so remaining unsold, but for not less than par. Such bonds shall be exempt from all taxation for municipal purposes, and among equal bidders preference in the sale and allotment thereof shall be given to bidders residing in the city of Salem, and state of Oregon, for the smallest amount and lowest denominations in due sequence.

Section 6. It shall be the duty of the treasurer of the city of Salem, Oregon, when said bonds herein provided for shall have been sold and paid for, and the purchase price thereof shall have been received by such treasurer to arrange and keep all funds arising from the sale thereof, separate and apart from all other moneys of the said city and the same shall be designated, "emergency bridge fund," and the same shall be paid out only for the purpose of constructing and repairing bridges within the city of Salem, Oregon. Section 7. For the purpose of carrying out the provisions herein contained, namely: To incur an indebtedness in the sum of \$50,000.00 for the purpose of reconstructing bridges destroyed by recent floods on Mill creek, and constructing and repairing other necessary bridges, all by the issuance and sale of bonds, a special election of the city of Salem, Oregon, is hereby called to be held on the 15th day of April, 1911, which election shall be held in all respects in the manner in which general elections are held in the city of Salem, at which time the matter of incurring

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**Joy AND SICKNESS DON'T CHUM TO BE HAPPY KEEP WELL**  
USE ONLY **DR. KING'S NEW DISCOVERY TO CURE COUGHS AND COLDS WHOOPING COUGH AND ALL DISEASES OF THROAT AND LUNGS** **IT HAS BROUGHT JOY TO Millions**  
Price 50c and \$1.00  
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such indebtedness by the issuance and sale of bonds shall be submitted to the legal voters of said city for their adoption or rejection. Each voter shall designate his intention by voting "Yes" or "No" in answer to the following question: "Shall the common council of the city of Salem, Oregon, incur an indebtedness by the issuance and sale of bonds for the purpose of reconstructing bridges destroyed by floods on Mill creek and constructing and repairing other necessary bridges in the city in the sum of \$50,000.00?" Section 8. The ballot title to submit this ordinance to the legal voters of the city shall be substantially as follows, to-wit: "To ratify Ordinance No. 905, providing for incurring an indebtedness by the city of Salem, by the issuance and sale of bonds in the sum of \$50,000.00, for the purpose of constructing necessary bridges. Vote Yes or No."

Section 9. The city recorder shall, not later than twenty (20) days before the said proposed election, cause the full text and ballot title of this ordinance to be printed in a newspaper published and printed in the city of Salem, Oregon, for five (5) consecutive publications. Passed by the common council this 27th day of February, 1911. Attest: **CHAS. F. ELGIN,** City Recorder. Approved by the mayor this 2d day of March, 1911. **LOUIS LACHMUND,** Mayor. Try a Journal "Want Ad."



**The Best Heater**  
It will save you money every day you own it. I will install the best. Let me give you figures.  
**See Me**  
About an individual lighting plant for your home. The best thing in the market for cooking and lighting.  
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Salem's most popular restaurant  
**THE WHITE HOUSE**  
We cater to the public who demand a good meal for a small price.  
**Wm. McGilchrist & Sons.**

**Gold Dust Flour**  
Made by the SYDNEY POWER COMPANY, Sydney, Oregon. Made for Family Use.  
Ask your grocer for it. Fresh and shorts always on hand.  
**P. B. WALLACE, Agt.**

**The Bosom Sets Flat**  
The stud button holes exactly meet, the neck band does not bind on your neck; button holes exactly meet buttons, no bulging front, in fact a perfect fit if we launder your shirts. It is done with our new STEAM PRESSES, which do not rub or burn the fibre, but MOULD the cuffs, neck band and bosom to a PERFECT SHAPE. Try the new work. Visitors welcome.  
**Salem Steam Laundry**  
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Cincinnati . . . . . 37.50	Des Moines . . . . . 27.50
Milwaukee . . . . . 31.50	Indianapolis . . . . . 35.65
St. Louis . . . . . 32.00	Baltimore, Md. . . . . 49.75
New York . . . . . 50.00	Boston, Mass. . . . . 50.15
St. Paul . . . . . \$25.00	Charleston, S. C. . . . . 51.75
Kansas City . . . . . 25.00	New Haven, Conn. . . . . 49.85
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**C. E. ALBIN,** Agent Oregon Electric Railway.  
**W. F. COMAN,** Gen'l Freight & Pass. Agt., Portland, Ore.

**SUPREME COURT DECISION.**  
(Continued from Page 2.)

pert opinion than of a narrative of facts. However, there was some evidence tending to show that Kelsey was taking more than his share of the water and other evidence tending to show that he cut the ditch to irrigate his pasture land, when Dalton needed the water for his crops. We do not feel, therefore, that the verdict on the last cause of action was without evidence to support it.

Exception is taken to certain instructions of the court and these will now be considered. The first instruction is as follows:

"I instruct you that the prior appropriator of the waters of the stream for irrigation purposes has the right to use the same to the extent of his necessities for such purposes without let or hindrance from other users thereof, but that his use thereof must be economical and strictly in accordance with his needs, and not otherwise. It is his duty so to use his said appropriation in irrigating his premises as to do the least harm to other users, and so to handle the water upon his premises as will make the waters of a stream of the best use to the community. Every ditch should be so handled as to satisfy the users therefrom if possible. Any method of irrigation which is wasteful or extravagant can not be upheld by the courts and is an improper use thereof, when others need the water for like use. It is a rule of law that the appropriator does not own the water which he has appropriated, but he does own the right to use the same, and that only. After he has made use of it, any quantity thereof which passes below his premises, is open to the use of others as their rights appear, and the prior appropriator thereof cannot assert sovereignty over such water after it has passed the point where it is available to his usage. These rules apply to plaintiff and defendant in this case alike." We think this instruction properly

states the law and that it is not in conflict with the decree of 1906. That decree, it is true, adjudicates that Kelsey is entitled, as a prior appropriator, to the use of four feet of water, but this must be subject to the qualification that such use must be necessary at the time. At some seasons of the years one-fourth of that amount might be all that would be required, and at other seasons the whole might not be sufficient. Now to allow defendant to divert four feet of water upon his own land, when one foot would be amply sufficient, would be clearly unjust and contrary to that sound policy of the law which does not recognize actual ownership in running water, but merely right to the beneficial use of it.

The second instruction objected to, we think correctly states the law and does not infringe upon the rights of defendant as defined by the decree. The courts in all previous litigation between parties, as in this case, have recognized the difficulty of laying down any fixed rule for the diversion of this water at any particular time which would do exact justice to all parties. It is evident that all parties to this litigation are more anxious to inconvenience and annoy each other than they are to use their water to the best advantage, and that they will probably continue to litigate so long as their fields produce crops sufficient to pay the expenses. Nothing but placing a disinterested commissioner in charge of this ditch and keeping him there at the expense of the parties concerned will ever stop this litigation and it is doubtful if that course will have the desired effect.

Instruction No. 4 objected to by appellant is as follows: "I also instruct you that the findings of fact found by this court in that suit wherein this plaintiff and others were plaintiffs, and Mr. Kelsey was defendant, must control you, wherein such findings are definite and certain in their terms or their import is plain. Where this court in

**SYNOPSIS OF THE ANNUAL STATEMENT OF THE COLUMBIA LIFE & TRUST COMPANY, OF PORTLAND, OREGON**  
on the 31st day of December, 1910, made to the Insurance Commissioner of the State of Oregon, pursuant to law.

<b>CAPITAL.</b> Amount of capital paid up	\$ 200,000.00
<b>INCOME.</b> Premiums . . . . .	\$ 87,161.05
Interest . . . . .	23,274.01
Total . . . . .	\$ 110,435.06
<b>DISBURSEMENTS, 1910.</b> Death Claims . . . . .	\$ 4,000.00
Other payments to policy holders . . . . .	2,061.32
Agency expenses (commissions, etc.) . . . . .	29,850.93
Medical examination . . . . .	4,197.33
Salaries of officers and office employees . . . . .	10,997.38
Legal taxes . . . . .	3,304.21
All other disbursements (rent, printing, advertising, stationery, postage, furniture, etc.) . . . . .	14,959.82
Total disbursements . . . . .	\$ 63,421.47
<b>ASSETS.</b> First mortgage loans . . . . .	\$ 271,205.42
Municipal bonds . . . . .	16,274.30
Cash on hand and in bank . . . . .	4,159.84
Loans on collateral . . . . .	4,812.19
Other admitted assets . . . . .	10,196.41
Total admitted assets . . . . .	\$ 306,648.16
<b>LIABILITIES.</b> Legal reserve on policies . . . . .	\$ 22,351.90
All other liabilities . . . . .	1,060.22
Capital stock . . . . .	200,000.00
Unassigned funds . . . . .	49,829.27
Surplus to policy holders . . . . .	240,029.27
New insurance written in 1910 . . . . .	\$ 244,541.69
Insurance in force Dec. 31, 1910 . . . . .	11,714,569.89
Total . . . . .	\$ 3,990,422.99
<b>BUSINESS IN OREGON FOR THE YEAR.</b> Gross premiums received during the year . . . . .	\$1,295,932.52
Losses paid during the year . . . . .	70,063.19
Losses incurred during the year . . . . .	4,000.00
Total amount of risks outstanding in Oregon, Dec. 31, 1910 . . . . .	2,732,975.33

**COLUMBIA LIFE & TRUST COMPANY,**  
By M. M. JOHNSON, Secretary.

**FOLEY'S KIDNEY PILLS**  
For backache, rheumatism, kidney or bladder trouble, and urinary irregularities. Foley's Kidney Pills purify the blood, restore lost vitality and vigor. Refuse substitutes.  
**RED CROSS PHARMACY.**