Development of Irrigation Law.

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The subject, which I speak of to-day, is one that has occupied the attention of the statesmen and great talents from the time of illustrious Caesar to the present. Nor is it likely to cease being considered, but it will be argued and thought of throughout the legislative halls until the end of time.

The present century has seen the birth of that element of progress—the railway—which has woven a web of steel throughout the entire dominions of the United States; and in the short period of 75 years, a system of laws have been established by the states as each thread of the great webcast itself into their respective borders.

The laws, which control a more ancient element of civilization—irrigation—have not been so rapid in formation, and are still being scrutinized, remodelled, and in the end repealed, while the railway laws are quietly sleeping.

The word "Irrigation" at once conveys to the mind, the picture of some artificial water-course from which that sparkling and bubbling necessity of all life, crops silently among the little grains of the soil until the entire area, so exposed has taken a cool and refreshing drink.

It is now conjectured by able minded men, that this glorious 19th century will see the death of the steam railway as well as its birth. I am not able to prove or confute this conjecture; but fortunately, irrigation cannot be slurred in any such manner. Irrigation should, in itself have a feeling of pride over the other arts, since it can hold its venerable head above the sister-arts and say "I am older than you, and must be respected." It has already outlived and has seen the burial of many elements of progress and will continue to be looked to.
since it is said of it, "Irrigation makes homes for millions better than rain makes homes."

Many countries can lay claim for the originality of the system of irrigation.

It was practiced by the Egyptians, Assyrians, Babylonians, and the Chinese about 3000 years before the birth of Christ. In fact all of the sunny nations that border on the Mediterranean used very extensive canal systems for the raising of their food. The lemons and other citrus fruits were and are still raised by that ancient art.

Since irrigation was depended upon for the production of food, we will naturally inquire the nature of the artificial water conveyers that were in use at so early a date of history.

At that remote period of antiquity we would expect to find very crude works. This is not the fact. We find in the study of ancient history that the existing tribes were very skillful and proficient in every class of work undertaken. For purpose of an example, we may turn to their secret of embalming their dead. They succeeded in inventing a process of embalming, which was able to preserve the body to such an extent that some of them have been untouched and now occupy the cases of many museums. Their other works were no less perfect in proficiency than their mummies. They undoubtedly took as much care with their canals that they can be traced even to the present day.

The Romans were at a latter day, a great agricultural race, and since the rainfall was not sufficient they had to use this alternative. The Romans built their canals on the same principle as they constructed their roads throughout Europe. They constructed them for the purpose
of lightening their burdens as well as those of their posteri-
yty. They succeeded in doing this; and the roads that they
built have felt the footsteps of multitudes for ages. Their
canals supplied water to their posterity for many ages; and
to persons who desire to locate them, are visible to the
present day.

In the world around us, we see the needs of laws and reg-
ulations for the guidance of every branch of civilization.
But in those remote periods of history, when every man was
bound to every other one, more as brother and brother, and
not as lord and serv; laws were not needed.

So not until the time of Caesar, were written laws on
this subject known. That great expier found it necessary
to establish a code of laws regulating the rapidly growing
system of irrigation.

Shortly prior to this, however, there were certain un-
derstood laws; but not written. In Lombardy, it was genera-
ly understood that the state owned the water of all the
rivers. In the Venetian territories all the springs and col-
lections of rain water belonged to the government and the
water was rented.

To show the early laws on the subject of irrigation, I
will give a short synopsis of the Roman laws, taken from an
eninent writer on the subject of irrigation.

The Roman jurist in their classification of things as a
basis of laws regarding ownership and use, recognized, with
respect to proprietorship; two general classes: Things
capable of being possessed by persons exclusive of others;
and those incapable of being so possessed.
The latter were of four main fore headings: Things common, free to all mankind; Things public, belonging to some nation or people; Things belonging to some certain city, society, or corporation; and things belonging to nobody as things consecrated and devoted to religious uses.

Like the air, water was regarded as a necessity to human life, of which every one might use as much as wanted for personal requirements, but was not capable of personal appropriation, to private ownership further than in the quantity above named.

By the law of the nation, flowing water was the property of all men.

Among the things, that were especially counted by the Romans as public property, were roads and rivers. Cassius defines a public river as one which flows perennially.

Among the Romans as a general thing it may be said that the brook is a private stream and a river the property of the public.

The river was distinguished from a stream or brook by its greater volume. Like the shore of the sea, the bank of the river commenced at the limit of the spread of high water.

The construction of works of any nature upon the banks or in the channel of the river, and by which works the current of the river would in any way be interfered with, was prohibited by law.

The diversion of waters from public lakes and reservoirs were prohibited except with due permit from the state.

Water privileges were of two kinds: First, those of water for public use, these privileges were obtained from the head of the state; Second, those to individuals, granting them water for their own use and on their lands;
those privileges were granted by the local authorities.

The use to which water was to be converted, was not always specified in the grant; but it was understood that the water was to be used in good faith and under no consideration to be wasted.

The possession and use of running water from time immemorial for the operation of mills gave to right for the continuance of the same.

By this hasty analysis, we see that the laws were very general, and would not apply to the present condition of irrigation.

Owing to the great quantity of matter that could be related and discussed in this paper, for brevity, I will be required to make great strides in the development of irrigation laws over periods of history.

The Roman laws were repealed and remodelled by the different leading powers for a great many centuries. The next great law was the "LAW OF RIPARIAN RIGHTS", the established law of England.

I have been speaking of the subject of Irrigation in the Eastern Continent. The subject of irrigation is of as much importance to our territory as it was to the Egyptians.

We are located in an arid region, extending over a very large area, which is, with the exception of a comparatively small area, an area covered with greenwood, cacti, and rattlesnakes. The great problem is, how to turn this vast area into a garden, that will afford the inhabitants of the great eastern states any opportunity for homes.

It has been clearly demonstrated that this soil, for the most part, is productive with a reasonable quantity of water applied to it.
The next problem is how to obtain the water. This is obtainable by a system of canals. At present there are in existence a large number of canals that have been taken out, and wherever those few canals have reached out their arms the country has been turned into a garden. To prevent any lawlessness, it was necessary to establish laws for the guidance of those canals. But the existing privileges that the owners of the canals enjoy have not been formed in a day, but have come down to us from earlier rights and privileges.

There are found in the territory of Arizona many pleasures for the scientific man, and for the pleasure seeker. In some parts of this territory there exist a remains of a prehistoric race, known as the "cliff dwellers."

Their homes have been found and a great many other evidences of their life, which has long since ceased. There exist traces of canals within the borders of Arizona, and probably in adjacent sections, which were used to convey water from the rivers for the purpose of irrigation, probably this same race, the "cliff-dwellers."

One such canal was constructed from the Gila River at a point a few miles east of the town of Florence and ran in a south-westerly direction towards the celebrated Casa Grande ruins, and there stopped to all appearances.

Said canals and their lateral; which are easily traced, were evidently used in the irrigation of quite a large portion of the lands of that fertile region.

From the physical evidences it is certain that this canal was constructed for the benefit of the entire community.

It is further evident that there were no other independent communities with which that community had to deal; hence there were no laws in the proper appellation that
for irrigation could have existed at that time; excepting
that which existed as a rule to govern the individuals of the
community in the use of the waters therefrom or their indivi-
dual uses as members of the general community; which rule
cannot be properly clanced as a law.

Beyond the fact, that a system of irrigation existed at
an early a date; nothing can be gathered from the above that
is connected with our subject, and the right to the use of
water for the purpose of irrigation and the laws for the reg-
ulation thereof, must be obtained from other sources; for
they left no descendants to perpetuate the right, which they
had adopted by which those who came after them would be gov-
erned or could be bound.

The government of the United States had its origin from
people who came from Great Britain; and as subjects thereof.
It is a rule of construction, that when the citizens of one
government migrate to a country, that is in its infancy and
where there is no organized government, they carry with us
the laws of the country which they left, and those laws
which are not locally inapplicable become the laws of the new
country and remain such until changed by special provisions
enacted for that purpose. In this way the doctrine of
"Riparian Rights"—the common law of England—as to the use
and flow of water, become the law of this government.

"Riparian Rights" may be defined in substance as "THE
RIGHT TO THE USE OF WATER; AS IT FLOWS IN NATURAL CHANNELS;
The right to the use thereof as it flows thus flows for do-

The right to the use thereof not to be increased or
diminished, or obstructed in its natural flow; polluted by
substances, which make it deleterious to health."
of water is the Riparian Doctrine. This law, we will designate as the
CONSTITUTIONAL LAW of this country, as such it exists in all parts of this
jurisdiction, as a right independent of legislative enactments, either state or
civil or national. Under this law the people have a right to the use of the
water as it flows in natural channels for domestic and manu-
facturing purposes, and that right is not subject for con-
tracts being treated as free to all like air and light. The
only diversion that can be made of water is for the pur-
pose of furnishing power for milling and manufacturing pur-
poses, and when thus diverted, it is the duty of those
making the diversion to return the water to the channel from
whence it was taken.

In order to make such diversion, the right to obstruct
the channel by the construction of dams is permitted.
If the channel is obstructed for the purpose of diverting the
water, it must be done in a manner as not to cut off the
supply of water to those owning lands immediately below, or
who have made similar use thereof before the diversion, or
to flood the lands above such obstruction.

In 1849, when that small army of bold and able bodied
men left their warm and easy corners, and with their heavy
load on their backs set out to cross these wild and
solitary plains where the buffalo and the Indians
roamed at large, they had pleasant dreams of returning with
their fortunes to their loved ones, obtaining it from the
long haired people of California.

When they arrived in what is now called the
virgin soil they found claims and in time obtained their fortunes.

In working the placer mines, it was necessary to use
water and the miners without any law on the subject, established rules to govern their individual rights in the use of water. In some places it was necessary to convey the water long distances from running streams to the mines, and this they accomplished by means of canals.

In many instances a great many of these individuals were compelled to form themselves into a body for the purpose of constructing their ditches, and whilst they had no laws or articles of incorporation to govern them, by common consent they acknowledged the respective rights of those in the company to their relative shares in the water that had thus been secured. Nor was this all; this body of law-loving people recognized the rights of others than themselves. Many other similar companies had taken water from the same running a stream and their rights were respected.

These rights were afterwards recognized by a special enactment of the Congress of the United States, which declared that water could be conveyed from flowing streams for the purpose of mining.

This is the first law on the subject of irrigation enacted by either the national or state government.

The act above referred to, whilst it recognizes the right to such appropriation or use of water was more in a nature to confirm the rights established by those who had been using water in the manner heretofore stated, rather than an act establishing a right.

Of the great population of the eastern states, that rushed to California in quest of that precious metal, and for the purpose of mining, large numbers turned their attention to agriculture at an early date. The rain-fall not being sufficient to produce the crops induced them to
resort to the art of irrigation for that purpose; and from that period to the present, irrigation has become the means by which the people of the southern portion of the Pacific slope of the United States have been compelled to adopt, in order to make agriculture a success.

The people of that region practiced irrigation extensively, but until recently, strange as it may appear under the doctrine of Riparian Rights, and their privileges and interests in the extensive canals and ditches, constructed by them were determined and adjusted by that law; and there was no proprietorship in the water itself, but the individual had only the right to the use of the flowing water through these artificial channels.

Recently the doctrine of the right of PRIOR APPROPRIATION as it is styled, has been established by law in several of the western states.

These laws, whilst differing materially, are intended to establish the right to the prior appropriation for agricultural purposes and thus destroy the common law referred to.

These laws in the main tend to an equitable distribution of the waters of flowing streams among the settlers adjacent thereto. Hence there has been established a law which provided for so many inches of water to each portion of land bordering on the stream. The character of the soil and the nature of the crops to be produced are considered in dealing out the water. The rights of those who first made the appropriation always being considered.

There being in this territory such an extensive area which is a perfect desert and worthless for agricultural purposes without water, and so productive when water is supplied to it. The supply of water being so limited, it is
absolutely necessary that laws be enacted that will secure an economic distribution of the water to the end that this vast territory will be made a beautiful garden.

What these laws should be is a subject that should engage the attention of both scholars and statesmen. It has been so in the past and it is needless to say that the question will be argued in the legislative halls, and in the end a code of laws will be established which will control the irrigation systems, and we will see Arizona a garden of flowers.