affects the permanent welfare of the Golden State. It is the irrigation question, and grows out of a recent decision of the Supreme Court of the State in the case of Miller vs. Haggin, affirming the doctrine of riparianism. This requires some explanation to make the subject clear to the ordinary reader.

Under the old common law theory, and custom, the owner of land bounded on any side by the bank of a non-navigable river, is the owner of that portion of the bank included within his lines, and of the river bed down to the middle of the stream. He may divert the stream for various uses providing he returns it to the river without appreciable diminution. These rights to the stream are called riparian rights, from the word ripa, which means a river.

A modern custom which is looked upon as law in the West, is the appropriation of water from natural sources of supply by *bona fide* settlers and landowners for domestic, mechanical and irrigating purposes, priority of appropriation and use giving priority of right, no person being permitted to go above the users of the water and cut off the source of supply. The claim thus established is not to absolute ownership of the water, but to its reasonable use for necessary purposes, with due regard for the mutual rights of claimants. A stream might be diverted and used for mill and culinary purposes, and turned back into the natural channel without material diminution. But for the purpose of irrigation it cannot be diverted without loss to the volume of water.

The litigation growing out of a dispute between Miller, a riparian owner, and Haggin, an irrigation claimant, was finally decided in favor of the former, and thus riparian rights triumphed for the moment over the demands of irrigation. The whole State was soon in an uproar. The Court was denounced unsparingly, the ruin of the agricultural interest was predicted, the hindrance to the progress of the State was pointed out, and the absurdity of the decision, although it seems to have been technically in accordance with law, was commented upon, and at last a pressure was brought to bear upon Governor Stoneman to call an extra session of the Legislature, to take up this question and solve it in the interests of irrigation.

The proclamation was issued, the Legislature has been convened and is now in session, and has to wrestle with three knotty problems: First, amending the State Constitution so that public and private rights shall be established and protected in reference to the rivers of California, navigable and non-navigable, public and private. Second, the reorganization of the Supreme Court. Third, the election of a United States Senator for the unexpired term made vacant by the death of Senator Miller. The last point is a disputed one, in the fullest sense. It is not included in the Governor's proclamation, and it is safe to say was not intended when he called the extra session. It is only a short time since he appointed George Hearst to fill the position, and under the State laws the Legislature can only consider, in special session, the designated subjects for which it was specially convened. But the Constitution of the United States in article 1 section 3 says:

If vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

And to give this full effect, Congress has provided, in section 16 of the Revised Statutes that,

"Whenever on the meeting of the Legislature of any State a vacancy exists in the representation of such State in the Senate, the Legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy in the manner prescribed in the preceding section for the election of a Senator for a full term."

These provisions are very plain and explicit, and of course prevail over the local law on this point. The only way to escape from this requirement is for the Legislature to attend to the business defined in the Governor's proclamation, and adjourn before the second Tuesday after its organization. But as Senator Hearst is a Democrat and the majority of the legislators are Republicans, it is hardly probable that they will miss such a good opportunity to make a party movement and discomfit the enemy.

The irrigating question is of great moment to the State. If the free use of its flowing waters cannot be had by the owners of the soil, in many places the country will be given over to partial desolation. But it looks very much as if the proposition to amend the State Constitution was made in the interest of speculators rather than of the agriculturalist. The bill introduced aims to make the use of all water for irrigation a public use, subject to the control of the State by law, and to secure to any person, company or corporation rates of compensation, to be fixed every three years for the construction and maintenance of works and supply of water, a net return of at least 7 per cent per annum upon the amount invested in the construction and maintenance of such works.

This is strongly opposed by many influential papers and a large portion of the agricultural population. They contend that the monopolies that will be created under and grow out of the guaranties this provided, will bring the public into bondage to the speculators. It is argued that it would be better to have all the streams placed under State control with a State scheme of irrigation works. The power of eminent domain gives the State this right, and water, it is believed, can be supplied much cheaper than under the method proposed, which, it is thought is promoted by speculating capitalists, who have by prior appropriations secured the great bulk of the water supply and are now working for legal control and profit.

State Engineer Hall has prepared a pamphlet, in which he sets forth his views in a very intelligent manner, and advocates a law something similar to that prevailing in this Territory, organizing farming districts into irrigation districts "with the powers of quasi-municipal corporations." We make the following extracts from his sensible suggestions:

"Riparian privileges should rest, not upon the, so-called, natural ownership of streams, but upon statutory enactment, and be subjected to the same measure of control that those of the public, or other individuals, are subjected, in the matter of diversion of waters and management of streams, as they are in other irrigation countries.

Riparian proprietors should have grounds for actions at law to recover for actual damage consequent upon diversions above.

They might be given preferred rights to water for stock and domestic purposes.

They might be given authority to appropriate, and thus hold water in streams to the extent of their actual, demonstrable and economical use thereof.

They might be given preferred privileges of appropriation for diversion and irrigation.

In other words they *might*, by statutory law, be given all the advantages which, as now claimed, the situation of their lands naturally commands for them, to the extent of actual benefit availed by them, or to any other extent, if equitable and the people as represented chose to make the law.

But they never can be given the ownership of the streams and of the waters in an irrigation country, as is contemplated by a recent decision of the Supreme Court of this State, and have recourse by injunctions against all diverters of waters, not riparian proprietors, without its proving an incalculable hinderance to the development of the country, and almost an insurmountable barrier to the inauguration of a proper public control of watercourses.

The affirmation of the riparian rights doctrine might drive water appropriators to an opposite extreme ground in order to combat it, and in the endeavor to escape this incubus of private ownership of natural streams and waters, an unregulated right of unlimited appropriation might be set up which might lead to monopoly of waters, in private canals and reservoirs. But this result may very readily be averted in legislative action.

The proposition to remove the judges of the Supreme Court, because they have rendered a decision that is unpopular, is quite startling. And to attempt this under cover of a constitutional amendment, looks like a dangerous piece of business. Legislating a whole bench of judges out of office, appears to be a disturbance of the relationship between the legislative and judicial branches of the Government, not at all in harmony with venerated institutions, and savors of an attempt to coerce the judiciary. They have probably given a decision in accordance with narrow and contracted views of the law. But the idea of abolishing a court for this reason smacks of imperialism; or it may be viewed as a public notice that judges must decide not upon their convictions but to suit the popular whim.

The California Legislature is placed in a trying situation, and its members have an opportunity of exhibiting the qualities of true statesmen; of acting according to the true interests of the State and the principles of justice and equity, or of imperriling the public safety and peace by pandering to prejudice and playing into the hands of speculators. Their course will be watched with interest in every State and Territory of the Union.

DYING KICK OF A GRAND JURY.

Our faithful Ogden correspondent enables us to present in full the report of the late grand jury of the First District.

Like all other similar bodies in Utah now-adays, the pre-requisite for membership was the degree and intensity of "sympathy with the prosecution" when "Mormons" are pursued by the terrors of the law. The less of the usual qualifications which constitute what might be correctly termed "good men and true," the better. Scrupulous men are not wanted on juries. Such persons are thorns in the side of the prosecution, which includes the courts as well as the District Attorneys.

As customary in the Utah judicial raid, the First District body of inquisitors acted largely as if there was no other offense except that of men sustaining and acknowledging the wives they had married long years before a law existed to make their marital associations *malum prohibitum*. So completely covered were their eyes with anti-"Mormon" blinders that they failed to see that there were any houses of ill-fame in Ogden. "There are none so blind as those who are not willing to see."

The report is a fair indicator by which to gauge the extent of the originality of the defunct body. It is largely made up of a quotation from a similar exhudation from an Idaho grand jury, in relation to which the Ogdenites were ready, in an apish way, to say "ditto," or "them's my sentiments," or to grunt out the ordinary assent of commonplacers—"me too." They quotingly complain of certain "Mormon," men being in hiding, just as if it were a matter for surprise that persons who believe they are marked for ruin, and liable to be sent to prison for any period in the whim of those who hate them, should not rush with coat tails on a bee line straight into the arms of their avowed enemies. Then it is remarked that many of the witnesses are not of the willing sort. They do not make feverish haste to give information to send their husbands, brothers and friends to prison. Very remarkable, isn't it?

The quotation from the report of the Idaho grand jury was appropriate. No wonder the Ogden jury said—"same here." In Idaho U. S. Marshal Fred. T. Dubois boasted of having got a jury which "would convict any 'Mormon' brought before it on a charge of unlawful cohabitation, innocent or guilty. It would convict Jesus Christ himself if he were placed on trial on that charge." The infamous Dubois doubtless spoke the truth. It was also doubtless quite appropriate, for the late grand jury of the First District to quote largely from the language of Idahoans engaged in similar business. The aping was by no means confined to words.

The insipid vaporing of the deposed associate justice in the taffy-exchange betwixt himself and the jury, was rich. His talk about obedience to the laws, in the light of the reasons for his removal, reaches the highest pinnacle of impertinence, mingled with unblushing hypocrisy.

JUDICIAL FALLIBILITY.

When a "Mormon" points out the fallacies uttered by courts on a question relating to his religion and his liberty, he is assailed as a seditious person, and his dissent from judicial rulings is construed into lawlessness, rebellion, disloyalty and other dreadful things. But other people may take issue with courts as with congresses, and there is not a murmur of disapproval. The people of California, as explained in another article, have been berating the Supreme Court of that State and calling the Judges all kinds of hard names over a decision upon riparian rights, but we hear no word of reproof against their indignation.

That courts are not infallible any more than individuals is frequently made apparent, and that the people have just as much right to criticize the judicial as any other branch of the government, ought to be conceded by every person possessing common sense. And there is no "rebellion" in it. If a thing is wrong, it is not made right by the united say so of three or a dozen or any number of judges. A matter of controversy may be settled so far as the law is concerned, when adjudicated finally by a court. But a question of religion, morality and truth is not affected by the dictum of any judicial officer or body, neither can it be.

The Californians dissent so strongly from the decision of their Supreme Court that measures are in progress for its dissolution. Nearly everybody is hostile to it, and the opposition is so great and the animosity so intense that the judiciary is danger of being brought generally into contempt. Judges after all are only mortals, and they are prone to error. Respect should be accorded them even when they make mistakes if they are sincere. But when they evade responsibility pander to popular prejudice or are governed by religious or political bias neither their judgment nor their personality is entitled to the worship which some people desire accorded to them.

"We want no John T. Caine dispatches. He lies like a Mormon," was the language of Parley L. Williams in the Federal Court room yesterday. The poor gentleman blurted that statement out because his soul was worried. He did not take time to reflect that a dispatch from Hon. John T. Caine would be backed by authoritative papers as soon as they could reach this point by the most expeditious process available, and thus make him the falsifier. His insult aimed at an absent and honorable gentleman, and incidentally at a whole community of his peers, not to say superiors, in point of truthfulness has been severely commented on by individuals. We do not see why it should. "Consider the source." The poor gentleman's rabidity in relation to anyting "Mormon" is a subject for broad grinning even among his own friends. He was laboring under bitterness of soul, superinduced by disappointment in the overturning of one of his schemes. For a time his reason was dethroned, being supplanted by passion, which controlled him. There is no cause for any one to feel hurt at his remarks. Be charitable to him. He doesn't seem to be able to help himself. He was simply seized with one of his anti-"Mormon" spasms. Let him snort.

The appearance of Mr. John T. Raymond reminds us of an incident that occurred in the Ogden Opera House when he was playing Col. Sellers in "There's Millions in it," in the summer of 1881. Our attention was pretty evenly divided between the play and a man who sat immediately in our rear. He was immensely amused, his guffaws and exclamations being of the most pronounced character. During the steamboat scene, when the boiler bursted and blew the boat and the Colonel's scheme into smithereens, our friend behind could not contain himself. Raising his huge hand—which looked about the size of an ordinary ham—he brought it down on his knee with a slap, at the same time exclaiming, in a loud voice: "Busted, by gosh, jest like all the kalkerlashuns I ever made in my life." The sensation he made in the auditorium surpassed that caused by the blowing up of the steamboat. The fact is, that the fellow was a sort of Colonel Sellers himself in the rough, and his interest was mainly caused by the more or less faithful delineation of his own portrait. There are lots of Col. Sellers, but they are not quite so candid as the man at Ogden was, or perhaps they cannot see themselves as they are. Indeed the most chimerical business men are as a rule always trying to impress people with the idea that they are intensely practical and matter of fact. They receive intimations to the contrary with ineffable disgust or wounded pride. Right in this community there are men of this stamp, who are constantly erecting air-castles, and hypothecating schemes in which they see "millions." But the sight never goes further than the "mind's eye." The discriminating reader who peruses this can probably pick out half a dozen Col. Sellers within the range of his personal acquaintance.

DELINQUENT NOTICE.

NOTICE IS HEREBY GIVEN TO F. A. Enrls, whose address is not known, that I, Philip Neder, have done the necessary amount of work required by law on the following Mines: Alexandria and Pinto, situated in Rush Valley Mining District, in Constitution Cañon, Tooele County, Utah Territory. The amount due me for labor performed and expenses for assessment from the year eighteen hundred and eighty-one to eighteen hundred and eighty-five, the amount set forth being his share of assessment $739.39, and if not settled within the required time of law, I shall, in accordance with law, claim the above named Mines, together with all their Patents.
June 23rd, 1886.
w3m PHILIP NEDER.