

RESIDENTS MUST NOT EXPECT MUCH RELIEF.

Little Chance of the Wright Act Being Upheld.

JUDGE FULLER'S VIEW.

An Interesting Open Letter by the President of an Irrigation District.

ACTION OF THE SUPREME COURT.

Reasons for Anticipating the Ruling of the Highest Tribunal of the Land.

SAN DIEGO, CAL., Aug. 29.—Judge George Fuller, president of the Linda Vista irrigation district, has sent an open letter to residents and property-owners of the district in answer to inquiries as to the probable outcome of litigation concerning the Wright act and the duty of the district in the meantime.

"Since the announcement of the decision of the United States Circuit Court at Los Angeles in the Fairbrook case, adverse to the constitutionality of the Wright act," says Judge Fuller, "I have been many times asked by residents and property-owners in Linda Vista district what I thought would be the fate of the act when it should come before the United States Supreme Court. Up to this time I had been content to assume that the act was valid on the strength of decisions of the Supreme Court of this State, all of which have been favorable to the constitutionality of the act and its validity from all points of view. But for this recent adverse ruling I should probably have been content to await the decision of the United States Supreme Court in the Modesto case, pending on appeal before it, without attempting to form an opinion in advance as to its probable action.

"The result of close examination is to make it appear to me that there is much ground for apprehension that the Supreme Court of the United States will decide that the taxing power of the State cannot be used by local assessments in aid of providing water for irrigation. The act attempts to extend the right to assess for local improvements to a kind of improvement for which assessments were never before made, and the right to so assess is attempted to be grounded on the theory that, although irrigation may primarily and directly benefit the owner or occupier of land irrigated and only incidentally and indirectly benefit the community, yet that benefits to the community generally from irrigation of large tracts of land, which without it would be arid and unproductive, are so extensive and far reaching that improvement may be considered a public one, or public use to such an extent, at least, as rightfully to call for the exercise of taxing power in aid of it.

"Indeed the view adopted by our State Supreme Court is that the act is for the benefit of the public, and that the advantage to owners and occupiers of land using water provided is only incidental. This is a matter of opinion which may be affected by environment; and possibly if the Judges of the Supreme Court of the United States were all residents of California, and the arid region were something more to them than a thing to read about or hurriedly passed through on cars, and the need of that region for irrigation, difficulty of providing it and the change in productiveness and habitableness wrought when water is brought on the land were all known to them as known to the Judges of our own State tribunal, the Federal Supreme Court would coincide with the views

of the former. But none of these promises being true (save that Judge Field, one out of nine members of the court, is an old Californian and familiar with the whole subject) these peculiar conditions are not likely to exert such influence upon their decision.

"The precedents most relied on in support of the act are the reclamation district cases, of which there have been several in the Supreme Court of the United States, coming there from different States, decisions in all of them having been favorable to the right to tax for drainage purposes or for the prevention of overflows by levees. Consideration of public health has been one element in upholding drainage acts as measures for public benefit and this would be sufficient in itself to uphold them. But this would hardly be considered a sufficient reason to sustain the irrigation act. The arid region is very healthy without water, though it may be uncomfortable. I am not speaking of deserts, to which the Wright act could not be made practicable, but drainage acts that have been upheld, independent of the consideration of public health, as an exercise of power of the Legislature to regulate the use of adjoining property held in severalty by different owners, but which cannot be improved or enjoyed without the concurrence of all.

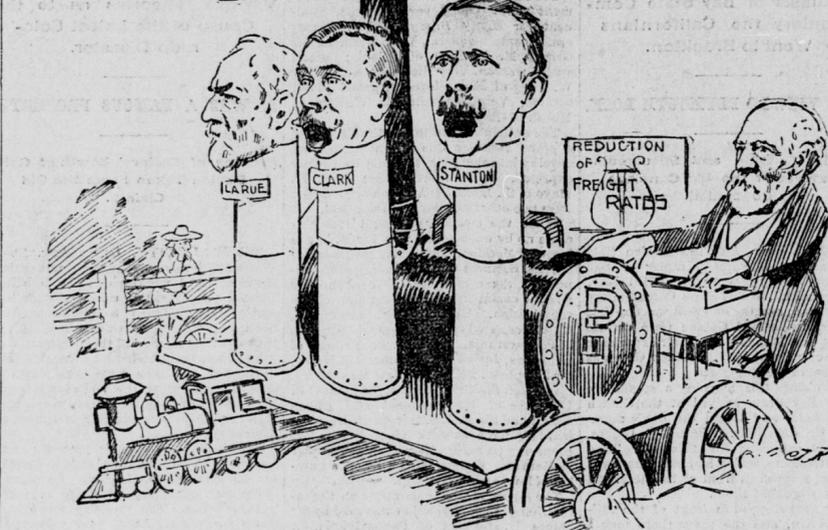
"In these drainage acts owners of several tracts are treated for purposes of the acts as owners of common property. Can any principle be extracted from the ground for upholding drainage acts which will support the irrigation act? Can several owners in one irrigation district be regarded in any view as owners of a common property? They have one thing in common, that their lands are arid. But so far as physical conditions are concerned any one of the tracts in a district may be watered without watering any others. It can only be said that none of the lands in the district can be provided with water for irrigation without providing it for all of the lands in the sense of finance, or, in other words, that it is practically impossible to raise funds necessary for providing a water system unless all the land-owners in the district contribute.

"But is this a reason, in law, for compelling an owner to contribute? Men's necessities or their financial difficulties in establishing any business or enterprise which might benefit a community as well as themselves have never been recognized as a basis for levying taxes. Wherever such an attempt has been made it has failed. The United States Supreme Court may discover no essential difference between illegal taxation to aid in the establishment of manufactories and taxation to aid in the establishment of orchards, vineyards or farms. The presumption is prima facie that an act of the Legislature is within the scope of its powers. If an attack is made upon it it must demonstrate that it contravenes some particular provision of the constitution. If it is a matter of doubt the act will stand. It will not be set aside unless it palpably conflicts with some constitutional limitation.

"Premising these principles, our State Supreme Court holds that the hastening of irrigation development is a matter in which the public has such an interest as to justify the levying of assessments upon property-owners in districts for the purpose. This is what may be called an extreme liberal view of the general-welfare clause. If the United States Supreme Court shall adopt it it will be a step aside from the beaten path of that conservative tribunal. I think it would be wise to do no act not absolutely necessary for saving rights and to cut off all possible expenditures consistent with this until the decision of the United States Supreme Court shall be announced."

Great Sewing-Machine Fight.

CONCORD, N. H., Aug. 29.—J. F. Wilhelm of the Excelsior Fur and Glove Sewing Machine Company, while here yesterday discovered at a clothing-store a sewing-machine made by a rival cor-



THE RAILROAD COMMISSION CALLOPE ON WHICH HUNTINGTON IS PLAYING THE SAME OLD TUNES. (Suggested by a cartoon in the Chicago Inter Ocean.)

poration, and the result will be, in all probabilities, that Concord will become the center of one of the greatest sewing-machine fights ever witnessed in this country. The company represented by Wilhelm claims that the machine in possession of the local concern is a direct infringement on its patent, and will test the question before the United States courts in New Hampshire.

ROW OVER SCHOOLBOOKS.

It Is Said a Contract Has Been Made With a Trust.

TOPEKA, KAN., Aug. 29.—There is a row in the Topeka School Board over the purchase of new books. The American Book Trust has an agent here who has won over a majority of the board and is about to get a contract for the books desired. The minority, however, claim that the books can be purchased elsewhere, and if the contract be made the matter will get into the courts.

The Kansas law is strict against trusts and combines and agents may be held criminally liable. The scheme is, however, to proceed against the trust by injunction. There have already been two successful prosecutions against trusts in Kansas. One broke up the undertakers' combine in Topeka; the other, instituted by the Attorney-General, broke up the paper trust.

RED FLAGS BARRED.

They Will Not Be Tolerated in an Open-Air Demonstration.

CHICAGO, ILL., Aug. 29.—Red flags will not be allowed to be publicly displayed by the socialistic labor agitators at the open-air demonstration and picnic, which is to be addressed Sunday next by Keir Hardie and John Swinton, or in the parade of the socialists Monday, which is Labor day. An order to this effect was given the police department to-day by Mayor Swift. One of the committee in charge of the picnic is Oscar Neebe, one of the pardoned Haymarket anarchists. In his saloon there is displayed a big blood-red banner, which it is proposed to present to the socialists at this picnic and used in the meetings of that body. The police may even prevent this public display of the lawless emblem.

Killed by Lightning.

MADISON, WIS., Aug. 29.—While a wagon containing nine persons was being driven near Deerfield from a picnic this afternoon, a thunderstorm broke out and lightning struck the party. August Selnow and a 14-year-old girl named Holtz-huler were instantly killed. A 12-year-old sister of the latter received fatal injuries from the shock and from falling from the wagon. The other six, except one, were all seriously injured.

TO RETARD PROGRESS

Southern Pacific People After Valley Road Officials.

SIGNALS AT CROSSINGS.

The New Line May Be Forced to Expend Considerable Money on Them.

PLAN OF THE OPPOSITION.

Good Progress Is Being Made, However, on Both of the New Roads.

STOCKTON, CAL., Aug. 29.—The Corral Hollow road is making rapid progress with its work of grading on Hunter street and is now on the second block south of Taylor street. This morning Hy Barber, the local representative, was looking for more teams, as the haul is longer now and more teams can be used advantageously. He did not have much trouble, as he has already about forty applications for work from men with horses.

There are now about 150 men at work scraping, loading and hauling earth for the Corral Hollow road. The company evidently means to carry out its expressed intention of having the road in operation in time to bring coal here from the mines for use this winter.

To-night the franchise for this road came up before the Council and there was very little opposition to the granting of it.

Some time ago Chief Engineer Storey of the Valley road stated that no more opposition would come from his company, which was the chief objector when the franchise came up to be passed to print for the first time.

The pile-driver to be used in construct-

ing the trestle bridge over Mormon Channel at Hunter street was finished to-day, and the work of driving the piles will be commenced as soon as the timbers and piles arrive. They are due here by the first of next week. This bridge will be about 360 feet long when completed. Great pains have been taken by Surveyor Atherton in placing the line of the bridge in order that it may obstruct the channel as little as possible and that the piling may not catch debris brought down by the stream. In order to accomplish this object the bents of piles will be placed as nearly as possible parallel with the stream, and thus the bridge will not obstruct the channel more than is absolutely necessary. It is claimed that the trestle bridge further up the stream erected by the Valley road will act as a dam, but Chief Engineer Storey denies this and says it will not obstruct the channel any more than that planned by the Corral Hollow people. The representatives of the latter claim that their long bridge on a curve over the stream will be more costly to them than if constructed directly, but that they were looking out for Stockton's interests when they designed the bridge, and arranged to have it erected according to the proposed plans in order not to have it obstruct the stream.

The object of the Valley Railway Company in laying short sections of track across streets where the Corral Hollow road will have to pass was probably a coup d'etat to save considerable expense. It has been rumored that the Valley railway people broke faith with the Corral Hollow Company in regard to the crossings, but this rumor, according to Director Coleman of Corral Hollow road, is not correct. Representatives of the two companies had a consultation about the crossings, but the Valley people would not enter into any agreement at all, saying that the matter would have to be referred to the board of directors.

It is now said that the Southern Pacific Company will compel the Valley company to establish and maintain an interlocking safety signal at every point where the latter company's line crosses the former's. The system, so they say, is quite expensive, the cost being about \$200 for every crossing, so the Valley road wants to "play even," as much as possible, at the expense of the Corral Hollow road.

Marriage of a Diplomat.

NEW LONDON, CONN., Aug. 29.—The

TWELVE JURORS PREPARED TO TRY DURRANT

Duke d'Arcos, the Spanish Minister to Mexico, and Miss Virginia Woodbury Lowrey of Washington were married at the Pequot House yesterday. Only immediate relatives were present, with the exception of the Spanish Minister, Dupuy de Lome, and his wife.

PRIVATE MOLTZ DESERTED.

Shots From the Sentry Failed to Check His Flight.

WILLETTS POINT, L. I., Aug. 29.—Private Fred Moltz, a prisoner, escaped from this post yesterday. Moltz enlisted in the engineer battalion two weeks ago and was identified by his description in the papers sent to Washington as a deserter from the First Cavalry. He was lodged in the guardhouse on an order from the adjutant-general at Washington, and yesterday he confessed to Major Koepfer that he was the First Cavalry deserter. He was to have been tried by court-martial in six weeks.

While being taken with two other prisoners from the guardhouse to the mess hall yesterday for dinner, in charge of Private Herman Mari, the sentry, Moltz broke away and ran. As quickly as possible the sentry drew the blank cartridges from his Krag-Jorgenson gun and placed six ball cartridges in the magazine. He shouted to the prisoner to stop, but he continued running. The sentry then fired the six shots at Moltz as he bounded over the ditch and across the narrow strip of meadow land to the woods just outside the post.

None of the shots appeared to have taken effect. The report of the rifle brought the whole guard and many other sentries hurrying to the scene, and a search was made. Up to midnight no trace of Moltz had been found. The sentry will probably be punished for allowing the prisoner to escape.

SEVERAL WERE TO BLAME

Verdict of the Coroner's Jury in the Gurney Hotel Disaster.

Employers Censured for Keeping a Drunken Engineer and Working Him Sixteen Hours a Day.

DENVER, COLO., Aug. 29.—The Coroner's jury sitting upon the twenty-two bodies of persons killed in the Gurney Hotel accident rendered a verdict to-night. In part the verdict reads:

"From the testimony submitted, which was conflicting, we are unable to fix the responsibility for the disaster upon any one person, but we believe the owners and managers, Peter Gurney and Robert C. Greiner, were blameable for requiring of the engineer sixteen hours' work out of twenty-four—a request far beyond the ability of any man to endure and perform good work; also for employing an engineer whose habits were dissipated and unreliable, and whose experience did not justify them in placing him in such a responsible position, all of which were well known to them.

"We find that the engineer, Helmuth Loescher, had been drinking on the night of the disaster, and further, he had not examined the safety valve to the boiler for two months, proving him unfit to occupy any position where security to life and property depends upon the faithful performance of duty."

The verdict also reflects upon the methods in vogue in the office of the City Boiler Inspector, and closes with a suggestion for legislation on the subject.

The jury was composed of the following prominent citizens: K. G. Cooper, F. B. Croke, F. E. Edbrooke, Charles W. Babcock, Frank M. Demange and R. W. Speer.

Capture of a Desperado.

COUNCIL BLUFFS, IOWA, Aug. 29.—Ed Tierney, a desperado, was captured near Vail, Iowa, to-day by the Sheriff of Holt County. He was taken to Denison and lodged in jail, awaiting requisition papers.

For additional Pacific Coast news see Pages 8, 9 and 1.

S. E. Dutton, Wholesale Stationer, Completes the Panel.

DURRANT WILL TESTIFY.

His Attorneys Declare They Will Place Him on the Stand.

THE CASES FOR AND AGAINST.

Synopsis of the Evidence to Be Presented by Prosecution and Defense.

THE DURRANT CASE IN A MINUTE—THE JURY COMPLETED.

Samuel E. Dutton, the twelfth juror in the Durrant case, was secured yesterday morning, making the complete list of jurors as follows: J. J. Truman, 812 Twentieth street; Thomas W. Seiberlich, 533 Ellis; M. R. Dempster, 36 Glen Park avenue; Nathan Crocker, 1912 Bush; Charles P. Nathan, 1617 Van Ness avenue; Horace Smyth, 2127 Broderick; F. P. Hooper, 2741 California; L. Gregoire, 816 Capp; Warren Dutton, 1328 California; David Brooks, 1311 California; J. H. Babbitt, 1015 Market; Samuel E. Dutton, 2311 Sacramento.

The court adjourned till Monday, when the opening statement of the prosecution will be made.

The attorneys for Durrant state that he will go on the stand to testify in his own behalf. The evidence which will be given by a number of his witnesses has been learned, but their names are still concealed.

A succinct presentation of the case for the prosecution and that for the defense is printed to-day.

The twenty-first day of the trial of William Henry Theodore Durrant, charged with the murder of Blanche Lamont in the Emmanuel Baptist Church on April 3, 1895, ended the long struggle for a jury in the selection of Samuel E. Dutton, the twelfth man, yesterday morning at 11:30 o'clock.

More than half of the venire of seventy-five citizens presented themselves to Judge Murphy at the opening of court and offered excuses of all kinds, both serious and humorous. Some informed his Honor confidentially that they had made up their minds on the question of guilt or innocence. There were two or three who suddenly became unable to serve through an attack of rheumatic gout, and they received the solace that the courtroom of Department 3 was a great sanitarium for diseases of that sort. But there were enough left who were able and willing to do their duty.

E. L. Atkinson's was the first name called. He did not respond and was allowed to pass without being dignified with an attachment.

S. M. Bettman was subjected to a rigid examination that indicated the determination of counsel to get that twelfth juror as quickly as possible. But he passed down the line on the ground of possessing a positive opinion.

H. Palmer also passed through a series of searching questions, but his mind was also made up and he was excused.

Samuel E. Dutton of 2311 Sacramento street was the fourth man called and the third examined. His questioners put him through the same rigid course. Mr. Dutton is a member of the firm of Dutton & Partridge, stationers, 212 and 214 California street.

"Have you any conscientious scruples against the infliction of the death penalty in a proper case?" asked District Attorney Barnes.

"Not in a proper case," replied Mr. Dutton, "and to my mind a proper case would be a cold-blooded murder."

"Could you be satisfied as to the guilt



1. J. Truman. Nathan Crocker. Charles P. Nathan. W. R. Dempster. L. Gregoire. T. W. Seiberlich. J. H. Babbitt. H. J. Smyth. F. P. Hooper.

THE TWELVE GOOD MEN AND TRUE IN WHOSE HANDS RESTS THE FATE OF W. H. T. DURRANT.