

be a public use and subject to the regulation and control of the State, in the manner to be prescribed by law."

(d) Title 8th of the Civil Code, providing for the appropriation of water, is the law of the state, and whenever the Common Law of England is antagonistic to or inconsistent with any section of said title, it has no force or effect as law in this State.

(e) Law it defined by our Code, "as the will of the people solemnly expressed."

As to No. 1 the usual mode of measuring water is by the Cubic inch and is universally condemned by those who have given the subject considerable study, in fact, it is utterly impossible to measure water according to the law of the State of Colorado, when it is in a considerable quantity, and in practice it is measured by the foot, and some nice points of law have arisen out of this, so that in providing legislation this must not be lost sight of.

As to No. 2, this is a matter that would not greatly affect us here, there being so little water now used; it is a point however that has been the cause of a considerable amount of difficulty in Colorado so that in the event of our compiling regulations it will be well to bear this in mind, and allow only a limited time—say six months—within which to record any waters then being used.

The proviso to section 4 is worthy of attention and that is that although anyone may have recorded a large volume of water, he shall be allowed to take in time of scarcity only what is beneficial to him for the land under cultivation, and no more. During the dry season of (I think 1887) in Colorado it being found that there was insufficient water for both irrigation and domestic purposes, the Court enacted as follows:—

"And the Court does further find and declare as a matter of law, that the uses to which water may be applied which are comprehended by the term 'domestic purposes,' hereinbefore applied and occurring in the constitution of this State, are as follows, and none other, that is to say, household purposes, including water for drinking, washing, bathing, culinary purposes and the like; water for such domestic animals as are used and kept about the home, such as work animals and cows kept to supply their owners and their families with dairy products; and such other uses not being either agricultural or mechanical, as directly tend to secure and promote the healthfulness and comfort of the home."

Supposing B recorded a water claim subsequent to A. If there was not enough water to supply A for irrigation and B for domestic purposes, B was intitled to get whatever water he required for the latter purpose while A had to do without as far as irrigation was concerned. The point thus raised constituted the interpretation of the term "domestic purposes." Some contended however that it also included the irrigation of garden and fruit trees. But the courts held that while the term "domestic purposes" meant the use of water required in the houses of settlers for cooking and cleaning purposes and