

WATER RIGHTS.

Under the heading "The Right to the Use of Water," Judge James Kerr, of New York, gives, in the March issue of *Irrigation Age*, a digest of the law upon this subject. The *Age* vouches for Mr. Kerr as being one of the best posted men on irrigation law in the east.

The Judge opens by saying that it is an elementary principle of law that air, light and water are the common property of all mankind; that is, belong to no one in particular, but to the public at large. The right to use is the only right that can be acquired, and this is not a proprietary right, but simply an easement. In this country private interest is secured only by act of congress, by statute or by prescription.

The right to the use of the water is restricted to the reasonable wants of the individual or company, and is held subject to the great fundamental principle of "not interfering with the rights of others."

"Water cannot be appropriated and taken for any use which is purely private and does not carry with it any public beneficial use, although auxiliary to a private enterprise and private profit.

"Where persons or a company appropriate water in the arid region under the statute and construct a ditch for carrying the water appropriated, and supplying it to the lands through which the ditch passes, they take on the nature of—if they do not become—common carriers; and owe certain duties to the public, among which is the duty of supplying water to any adjacent land owner who may desire it, whenever there is a surplus of water flowing in the canal, the beneficial use of which is not already disposed of to some one owning land along the ditch, who is using the water for a proper purpose, as for the purpose of irrigating his lands.

"Having acquired the right to the beneficial use of water, the proprietors of a canal may dispose of it in any manner they see fit, and at any price they may fix, provided only it be reasonable and equitable. Thus the proprietors of a canal will not be permitted, even in the absence of statutory regulations, to fix an extortionate price, which practically means the prohibition of all use of the water, for no man can be permitted to do indirectly that which the law prohibits him from doing directly. In the absence of a statute governing, it is thought that the price charged for water must be an equitable one; in other words, such an one as will yield a profit on the investment, and enable the farmer to pay the rental and yet secure a fair return for his labor. In Montana it is provided by statute that the county commissioners may fix the price to be charged for water.

"A canal company which has been selling a right to the beneficial use of its waters at a stipulated annual rental may

at any time change the method of disposing of such use, and charge a fixed price for perpetual water rights in addition to a specified annual rental, so long as they do not thereby impair or interfere with any vested rights of owners of lands under the canal. They may not only do this, but they may also require that the water rights be taken within a certain time, and if they are not taken within that time by the owners of lands under the canal, give notice that they will sell such water rights to any other person or persons, or that they will even refuse to sell them to any one.

"It is thought that the only effect such proceedings would have upon any owner of lands under the canal would be to subject him to the liability of losing his right of priority to use, and if the appropriation of water was not sufficient to supply all the lands under the canal, he might be cut off entirely of any right to participate in the beneficial use of such water. Where water is flowing in a natural channel, the law is that 'he who is prior in time is prior in right,' regardless of his location on the banks of the stream. An irrigation canal is merely an artificial channel of stream flowing through the land, and the same rule applies—'first in time first in right.' But it is thought that so long as there is water flowing in the canal, the right to the beneficial use of which is not sold and actually used, the land owner failing to take out a water right for his land will be entitled to the use of as much of such surplus as his land may require, provided only there be so much, upon the payment of the fixed rental therefor.

"It is a common practice with canal companies to sell what are known as 'floating water rights.' So far as the writer is aware, the legality of the sale of such water rights has never been raised in any adjudicated case, and the status of the holders of such water rights judicially determined. On principle, however it would seem that such a speculation in water rights is a hazardous enterprise where the purchaser is not an owner or holder of land under the canal which may be benefited thereby; for while water used in irrigating land is in many respects different from unappropriated water flowing in a natural channel through the land, and has been said not to be appertaining to the land, yet under an order from the county commissioners, who by law are designated to fix water rentals, the land owner who did not obtain a water right may still obtain water; and in the absence of statutory legislation on the subject, the company would be held, at common law, to have submitted itself to a reasonable judicial control invoked and exercised for the common good, in the matter of regulations and charges; and an attempt to use its monopoly of water for the purpose of coercing compliance with unreasonable and

extortionate demands, would lay the foundation for judicial interference, and a mandamus would issue.

"From this it follows as a corollary that if a person who has been taking water from a canal company at a stipulated annual rental, neglects or refuses to take out a water right in compliance with a demand of the company as above suggested, so long as there is a surplus of water unappropriated to actual use, and which is running to waste for want of such actual use, he will be entitled to receive and use that water upon his land upon application to the company and payment of reasonable charges therefor, notwithstanding the fact that floating water rights have been disposed of to persons other than actual owners of land under the ditch, and the company has no more water rights for sale. It goes without saying that it would be otherwise where the water is all actually used, under such sale of water rights, on lands properly under the canal."

EXPERIMENTS WITH CELERY.

Professor Coote, of the Oregon Agricultural college, gives in a recent bulletin an account of his experimentation with celery in 1893. His plants were started in a forcing house. As soon as the third leaf appeared the plants were pricked out into flats or boxes, three inches deep and twelve inches wide, which were kept in the house for a month. The last of April they were put in a cold frame to harden for two weeks. At the expiration of this time the plants were transferred to a well-prepared and well-moistened bed, where they were set four inches apart, rows being six inches apart, the tap root being shortened. The plants were liberally supplied with water, and after some days were transferred to ground spaded fifteen inches deep, in order to permit water to drain through.

For rows No. 1 and 2 trenches ten inches deep were dug and in them placed three inches of well rotted stable manure mixed with hardwood ashes, one part to five. This compost in the ditch was then spaded to the depth of five inches, thus mixing the eight inches of compost with two inches of soil. This being completed the plants were set out twelve inches apart, in a single row. The ditches were four feet apart, thus affording plenty of room for earthing up. Each row contained fifty plants.

Row No. 3 was given a top dressing of loam, ashes and manure in equal parts without any apparent results.

Row No. 4.—The trench was dug out thirteen inches deep, and six inches of fresh cow manure well spaded into the soil at the bottom of the trench. Much better heads were obtained by this treatment, the plants made a much more rapid growth, and were of better quality.

During the dry season, plenty of water was given, never permitting the plants to become dry. Under this treatment a good growth was kept up during the season.

Golden Yellow. — This variety was the first