which it was first appropriated. Then the title to water, like the title to a claim, in acquiring it or perfecting it, is not dependent on local rules. It may, as a matter of course, be abandoned, whenever the owner so pleases, but it is not held upon any condition by which it may be lost, unless, perhaps, the failure to carry out the purpose for which it was taken up, or the accomplishment of this purpose. There is this very noticeable feature, too, in the title of water, which is deserving of some attention. This title can be acquired for agricultural or manufacturing purposes as well as mining; or, indeed (when the appropriation is made for the special use of these industries) in preference to mining, to which the law, even in mining regions of the State, gives no preference in this respect. Whilst upon this point, I may be permitted to say that just now there seems reason to believe the purchase of the water-races of the State by the Government is not very far distant. The fact that large portions of auriferous ground are abandoned owing to the high rates charged for water, will not assist in bringing about the adoption of this policy to the same extent as the requirement of the water for those new industries which are daily springing up throughout the State. For instance, it is now ascertained beyond doubt that the foot-hills of the interior—those great spurs running out of the Sierras—are peculiarly adapted for the cultivation of tea, if only a sufficiency of water were procurable at moderate charges. A colony of Japanese settled down amongst these foot-hills have already, I am informed, sent to this market a few chests of the tea produced there, and it has been pronounced excellent in quality and condition.

There is no State legislation upon the subject of water-rights for mining purposes. The only reference to water supply made by the State is in the case of agricultural districts; but as this is intended to facilitate irrigation, it does not come within the scope of this report.

Decisions of the Courts upon some of the principal Water-right Cases.

In order rightly to understand the water-right system of California, the decisions of its Courts must be consulted and studied; for upon those decisions, gradually incorporated into the legislation of the State—taking, in fact, the place of that legislation, and now as firmly established as the principles of law regulating any other species of rights—the present water system is built up and regulated.

One of the first cases which came before the Court for its decision was that of Eddy *v.* Simpson. The action was brought to recover damages for interfering with the water-rights of the plaintiff, who had the prior occupation of the waters of Shady Creek, by means of a dam and water-race used for mining purposes. The defendant had taken up two neighbouring creeks, some of the water from which found its way into Shady Creek by natural channels, and in order to regain that water, he built a dam upon the creek above that of the plaintiff. The Judge charged the jury as follows:—

"As a general rule, the party who first uses the water of a stream is, by virtue of priority of occupation, entitled to hold the same. If a company of miners construct a ditch (water-race) to convey water from a running stream for mining or other purposes, and they are the first to use the water and construct the ditch, they are legally entitled to the same as their property, to the extent of the capacity of the ditch (race). For if it appears that there is more water running in the stream than the ditch of the first party can hold and convey, then any other party may rightfully take and use the surplus, and it does not matter whether the excess of water be taken from a point above or below the dam of the first party."

This rule was then applied to the facts of the case, and the jury told that the plaintiff was entitled to the quantity of water he appropriated, and no more; and if the defendant, by the construction of his race and dam above that of the plaintiff, diminished the quantity of water taken up and used by the latter, then he was liable for damages; but if the defendant put into the creek as much as he took from it again, the plaintiff was not injured. One of the principles decided by this case, and hereafter referred to, is, that a person once parting with water, by permitting it to flow into a constructed race or reservoir, loses all further right to its use.

The next case of importance bearing upon this subject to which I shall refer, is that of Tartar *v.* Spring. Briefly stated, the facts of the case are these:—The plaintiff was a mill-owner, and in 1852 diverted a portion of the water of Spring Creek for the use of his mill. In 1853, the defendant built another dam five miles higher up the creek, in order to convey the water to his claim, and an injunction was sought to restrain him from doing so. The Judge, in reviewing the case, remarked that "the current of decisions goes to establish the policy of the State to permit settlers in all capacities to occupy the public lands, and by such occupation to acquire the right of undisturbed enjoyment against all the world but the true owner. This policy extends to all pursuits, without any partiality for one more than another, except in the single instance where the rights of the agriculturist are made to yield to those of the miner when gold is discovered in his land. The defendant," the Judge goes on to say, "insists that, as the State has granted the right to dig for gold, all of the incidents necessary for that purpose, wood, water, &c., must follow. This is certainly the doctrine of the common law, and would be held decisive of this case in the absence of any other right to contradict it. But in previous cases we have shown that there is nothing sufficiently expressive in the character of this legislation which warrants an interference with already-acquired rights." The water was declared to belong to the mill-owner under his first appropriation.

In a case where a party of miners settled upon the banks of a creek, and the waters of the creek were afterwards diverted by a second party, the instructions given by the Court set forth, "That where parties have taken up claims on the banks of a creek or stream, and are using the bed of the said stream for the purpose of working their claims, any subsequent erection of a dam or embankment, which will turn the water back on such claims, or hinder them from being worked with flumes or other necessary means and appliances, is an encroachment on the rights of said parties, and they are entitled to recover damages for the injuries they sustain."

Crandall *v.* Wood.—This is an important and interesting case, wherein a new phase as to the right to water is developed: the principle of appropriation modified by the application of what is known in common law as "Riparian Rights," and the rule laid down that a settler occupying the public lands stands on the same footing as if he were the owner of the land, provided his occupation had priority to protect his rights to the water. In 1850 Wood settled upon the public lands, and from his ranch or farm sprang the water in dispute. In 1852 Wood sold the privilege of diverting this water to the plaintiff