dried up. As the controlling facts established by the evidence introduced at the second trial are the same as those established by the evidence on the previous trial, and the questions decided on the former appeal were presented by the record, and were, as they are in the present instance, necessary to the determination of the case, said decision is decisive, for it is a firmly settled principle that the decisions of appellate tribunals constitute the law of the case upon all points, presented by the record, involving the merits, and can not be reviewed on a second appeal.

The peculiar facts in this case are materially different from the facts upon which any other decision of this court, in respect to water rights, is based, and the principles governing the same are entirely different. No authorities were cited in support of the former decision in this case. It is sustained by the following cases: Smith v. City of Brooklyn, 46 N. Y. Supp. 141, affirmed in 160 N. Y. 357, 54 N. E. 787, 45 L. R. A. 664; Forbell v. City of New York, 56 N. Y. Supp. 790, affirmed in 61 N. Y. Supp. 1005; Smith v. Adams, 6 Paige 435. It appears in the case of Smith v. City of Brooklyn, supra, that there was on plaintiff's farm a stream of water running in a well-defined channel fed by springs and from other sources; that the stream many years ago had been dammed, forming a pond, and that both had been in existence for more than fifty years; that the plaintiff used the pond for boat building and obtaining ice, and it was of considerable value for those purposes. The defendant, for the purpose of furnishing the city of Brooklyn with a water supply, constructed an aqueduct for the purpose of conducting the water from a reservoir which was filled by means of wells and pumps upon its own lands, situated at a distance of 2,400 feet from plaintiff's pond and spring, and the waters which fed the springs supplying water for the plaintiff's pond were thereby diverted, and the stream and pond dried up. The court, it appears, affirmed the plaintiff's

judgment for damages. 160 N. Y. 357, 54 N. E. 787, 45 L. R. A. 664. The points decided in the case are stated in the syllabi as follows: "If a city, by the operation of a water system consisting of wells and pumps, on its own lands, drains the contiguous territory, and thus diverts and diminishes the flow of water in a natural surface stream on the land of another, it is answerable in damages, under the rule that no one may divert or obstruct the natural flow of a stream, for his own benefit, to the injury of another. The water of a natural surface stream is for the benefit of all the riparian owners; and to divert or diminish its flow in any way, including an interception of underground waters, is an interference with a natural right, which will give rise to an action for the injury sustained. Whatever may be the rule with respect to the right of a landowner to use the water percolating through the earth, and thereby to affect the sources of wells or springs upon his neighbor's land, he may not divert and diminish the natural flow of a surface stream by preventing its usual and natural supply, or by causing, through suction or other methods, a subsidence of its waters." When the case was before the Supreme Court (46 N. Y. Supp.), in addition to the foregoing points, it was held: "The right of an owner of land to divert or consume percolating water does not extend to authorizing the destruction of a stream, spring, or well by cutting off its source of supply, when the acts causing such result are not done for the beneficial use and enjoyment for any purpose of the land itself, whereon they are done, but for the sole purpose of gathering water by pumps, as well as by natural means, to be carried to a distant place for the use of strangers having no right to the water, as against the owners of the neighboring lands." This was sustained in 61 N. Y. Supp. 1005, and 56 N. Y. Supp. 790. In the latter case, SMITH, J., in the opinion, said: "Previous to the decision of the appellate division of the Supreme Court in the Second judicial department in the case of Smith v. City of Brooklyn, 18 App. Div.