340, 46 N. Y. Supp. 141, the tendency of the decisions of the courts of this State was against the contention of the plaintiff in this case, and in favor of the proposition that an action would not lie against the owner of the land who intercepted or diverted underground currents of water to the injury of another. In the Smith case, the operation of a pumping station lowered the spring level of the surrounding country, and dried up a stream and pond belonging to the plaintiff. The court held the city liable for damages. The court, in its decision, distinguished the case from other cases previously decided in this State, on the ground that in the case at bar the cutting off of the source of supply of the plaintiff's stream and pond was not done, in the exercise of the legal right of the defendant, to improve its land, or in connection with the enjoyment of the land itself, but for the sole purpose of gathering and conveying the water to a distant place for the use of the inhabitants of the city. The reasoning of the court in the case so appeals to a sound judgment and keen moral sense as to be unanswerable." There is no material difference in the facts involved, and the principle applied, in the case of Smith v. City of Brooklyn, and the facts involved, and the principle applicable thereto, in this case.

The defendant company's business was mining, and not farming, and the purpose in running the tunnels was the development of its mines. It has not used any of the water on its own land for farming purposes, nor does it intend to do so; for it is alleged in the cross complaint filed by it and its codefendants that its codefendants have acquired from it the waters flowing from the tunnels, to irrigate and reclaim their lands for cultivation. It is a matter of common knowledge, and the courts will take notice of the facts without proof, that irrigation is the life of agriculture in this State; that the high mountains are cut by deep canyons, through which flow streams of water which are supplied from springs issuing from

surface channels or fissures in the rocks; that tunnels driven at a great depth and distance into the mountains cut these channels or fissures, and dry up or diminish the flow, not only of springs near the tunnels, but of those remotely situated; that along the course of these streams, and in the valleys into which they flow, a majority of the inhabitants of the State reside; that towns have sprung up, and large areas of land have been reclaimed and brought to a high state of cultivation, by irrigation from said streams. If it were established that the owners of tunnels which divert from their natural flow the waters which supply these streams have the lawful right to divert from the streams, and dispose of, such water after it has passed from the lands of such owners, most of the irrigating streams of the State can be diminished, to the irreparable damage of the inhabitants whose agricultural interests depend upon irrigating streams. From the commonly known fact that tunnels like the ones in question dry up springs in their vicinity, it must be presumed that the defendant company was aware, when the tunnels in question were started by it, that the springs which fed the Butterfield creek were liable to be dried up, or their flow materially diminished, thereby, to the great damage of the inhabitants of Herriman. From that commonly known fact, the effect of running the tunnels in question was not less apparent, when they were started, than was the effect of the acts of Brooklyn city from the facts in the case of Smith v. City of Brooklyn, supra. The question under consideration has not been decided by this court except in the case at bar. In neither of the two cases (Irrigation Co. v. Michaelson, 21 Utah 249, 60 Pac. 943, 51 L. R. A. 280, 81 Am. St. Rep. 687, and Crescent Min. Co. v. Silver King Min. Co., 17 Utah 444, 54 Pac. 244, 70 Am. St. Rep. 810), were the waters of a natural stream, which had previously been appropriated, diverted, or the natural springs, by which the streams were fed, dried up.

I therefore concur in the order directing the court below