

MAINE STATE LEGISLATURE

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May 11, 1926

To Hon. Ernest L. McLean, Director, Kennebec (Carlton) Bridge
Re: Damages, Indirect and Consequential

. . . You ask my opinion regarding the claim of the Kennebec Wharf and Coal Company "for damages caused to its business at Bath, Maine, on account of proposed bridge over the Kennebec River." . . .

This claims appears to be for indirect and consequential damages likely to accrue from the abridgment or subversion of those rights which his company has in common with the rest of the public in the navigation of the river:

"A class of rights which, of course, it was competent for the legislature in the exercise of their sovereign power of domain, to surrender or grant to those who would improve them, whenever it was found to be for the public interest to do so. Such a grant is no infringement upon private property."

"The legislature has the power to regulate and control by law all public highways and the navigable waters within the limits of the commonwealth. This power has been exercised from the commencement of our government without objection; and, in the use of it, bridges have been erected over many of the navigable waters in the state. Every bridge, however much care may have been taken to provide suitable draws, has obstructed navigation in a greater or less degree. In all cases the legislature has the power to inquire where the public convenience and necessity demand these partial obstructions and interruption to navigation, and upon what terms and conditions they may be established."

Commonwealth vs. John Breed
4 Pick. 460.

"Where the power to construct a bridge is limited by no express restriction, it includes the right to construct and maintain piers in the bed of the stream, to drive piles in the bed of the river, at the pier site, and to fix the number and location of the piers.

29 Cyc., page 314.

"If piers in the stream interfere to some extent with navigation, the owner is not liable where the charter powers have not been exceeded."

Monongahela Bridge Co. v. Kirk
84 Am. Dec. 527

"Mere unavoidable delays in passing a bridge do not of themselves constitute an obstruction for which the owner is liable in damages."

Illinois River Packet Co. v.
Peoria Bridge Assn., 38 Ill. 467.

The legislature in the enactment of Chapter 89 of the Private and Special Laws of 1925, authorized the construction of the proposed bridge, and the necessary authority to build the bridge was subsequently secured from the Federal Government.

No private or exclusive rights of the Kennebec Wharf and Coal Company have been invaded; there has been no destruction or diminution of private property for which the company might have an action at common law for damages. Its only rights affected are those of navigation, which it possessed as one of the public. For any lawful act done by the State in the construction of the bridge, the aforesaid company will not be entitled to recover damages, although it may have been indirectly injured, (Rogers v. Kennebec-Portland Railroad Co., 35 Maine 323.)

If the State constructs said bridge according to the terms and conditions of the aforesaid act and without causing any unnecessary obstruction or delay to navigation, no damages are recoverable.

Sanford L. Fogg
Deputy Attorney General