

MAINE STATE LEGISLATURE

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July 2, 1926

To W. B. Blaisdell, Esquire
Re: Delays at Hancock-Sullivan Bridge

Your letter of June 30th, regarding the trouble now existing in towing up through the draw of the Hancock-Sullivan bridge, addressed to Mr. Paul D. Sargent (then Chief Engineer, Highway Commission), has been handed this department for reply.

Answering same, I am pleased to advise you that the law appears to recognize the fact that

"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.

The foregoing is from a Massachusetts case which has been cited and approved by our Court in several cases.

"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 Association
48 Ill. 467

For any lawful act done by the State or the town in the construction of the Hancock-Sullivan bridge, the Towing Company will

not be entitled to recover damages, although it may have been indirectly injured because of the fact that it will be delayed at times in passing through the draw of said bridge. Rogers v. Kennebec-Portland Railroad Co. 35 Maine 323.

The construction of the bridge does not prevent navigating the stream. It may obstruct, it may impede navigation to some extent. Such a bridge cannot be erected without obstructing or impeding navigation, but as long as the obstruction does not cause unreasonable detention considering all the conditions, the navigation company has no grounds for damages, nor does it have grounds for reasonable complaint.

I understand from Mr. Sargent that the bridge is still under construction. This being true, the navigation company must use every precaution not to injure the construction because, if it does so, it will be liable for damages.

Our court has not directly passed on the last proposition mentioned, but the court in the case of Multnomah Co. v. Willamette Towing Co., 49 Oregon 204, said:

"If an injury to a bridge by a passing vessel is caused by negligence in undertaking such a voyage, and such negligence was the approximate cause of the injury, all persons controlling or participating in the voyage would be liable jointly and severally and the omission ^{of one} would be no defense to those sued; but, if the injury was due to negligent navigation after the voyage was begun those concerned in the navigation would alone be liable."

In this case the navigation company must accommodate itself to and be governed by tide conditions in attempting to pass through the draw of the bridge in order to prevent injury to the bridge structure, and in case a vessel is being towed, the propelling power must be sufficient to safely handle the barge or vessel which they are attempting to tow through the draw.

The construction of this bridge was duly authorized by the legislature and the necessary authority to build the bridge has been secured from the Federal Government. Consequently, if the bridge has been constructed or is being constructed in a reasonable manner and navigation is not being impeded beyond what is reasonably necessary, the navigation company has no recourse, except that they may make complaint to the Federal Government, and in case complaint is made, the Federal Government may fix a time for a hearing and determination of the facts and take such action as the facts and conditions warrant.

Sanford L. Fogg
Deputy Attorney General