

MAINE STATE LEGISLATURE

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August 30, 1928

To State Highway Commission

Re: Trees and Shrubs - Destruction or Injury by Utility Companies

. . . I beg to inform you that I do not find that our court has ever had occasion to answer the question you ask.

Section 15 of Chapter 60 of the Revised Statutes, provides that no gas or electric company, including telegraph, telephone, light, heat and power companies, shall injure, cut down or destroy any fruit trees or any tree, shrub, standing and growing for the purposes of shade or ornament.

Your inquiry does not indicate the kind of trees the telegraph company is cutting back. The statute, you will notice, applies to fruit trees and to ornamental trees. As regards other trees than those mentioned in the statute, the general rule of law appears to be that a telegraph or telephone company has no right to go upon private property and cut or trim trees without the owner's consent, although such cutting or trimming is merely of branches which overhang a street or highway. and if it does so, it will be liable in trespass.

It has also been held in many jurisdictions that a telegraph or telephone company will be liable in damages to an abutting land owner for any unnecessary injury to trees which overhang or which are growing upon a sidewalk, street or highway, in front of his premises; but as to its liability when there is no more cutting or trimming than is reasonably necessary for the proper construction or maintenance of its line, the decisions of the courts in different states are conflicting, it being held in some cases that the abutting owner is entitled to damages and in others that he is not. Each case will probably involve different conditions and would have to be considered separately, in order to ascertain whether or not the abutting owner is entitled to damages. It is in my opinion a matter for the telegraph or telephone company to consult its counsel and act under counsel's direction.

Sanford L. Fogg
Deputy Attorney General