

MAINE STATE LEGISLATURE

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May 8, 1929

To D. Eugene Chaplin, Esq.
Re: Water Pipes affected by Highway Construction

Yours of April 30th received. Apparently under the case of Brunswick Gas Light Company vs. Brunswick, 92 Maine 493, Dearborn is out of luck as a matter of law. In laying this water pipe in the public highway, even with the consent of the town to do so, he would apparently have no claim for damages if the public authorities in connection with improving the road damaged his pipe, and a fortiori if he had no express license to have his pipe under the road. Not only does Revised Statutes, Chapter 25, Section 13 not apply, but there is no other express statute overcoming the effect of the rule of law laid down in the Gas Light case.

Frequently the State Highway Commission have referred these matters to us for advice when merely in the stage of negotiation, and it is their usual procedure to do so when it gets into the stage of litigation.

If the claim is barred as a matter of law, I support all he can do is to go to the Legislature with a claim. On the merits of the case as set forth in your letter, it strikes me that he may be out of luck. In the first place, he appears to have been lame in contracting to deliver to Mayo this water, - agreed to do something which he might find himself unable to do. In the second place, it seems to me he was lame in not protecting himself when the highway was being remodelled. He had plenty of opportunity then to move his pipe over to the unsurfaced portion of the road, or acquire a right to put it on private ground outside the limits of the road. If he took a chance on leaving it where it was without action on his part, I should say he has only himself to blame.

Clement F. Robinson
Attorney General