

MAINE STATE LEGISLATURE

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April 23, 1938

To State Highway Commission
Re: Navigable Streams

. . . The general rule is that:

"A river which in its natural condition, unaided by artificial means, is susceptible to public use to float vessels, rafts or logs is a navigable or floatable stream according to the sense of the common law. As to floatable and non tidal streams, a riparian owner owns the bed to the middle, and all but the public right of passage."

In the case of Wilson & Son v. Harrisburg, 107 Maine at page 209, the Court said:

"The defendants' premises were situated above the Lewiston Falls, and the Androscoggin River at that point, being above the ebb and flow of the tide, was not a navigable river in the technical sense of the common law, but upon the undisputed evidence in this case it does not appear to be navigable in a popular sense, or a floatable stream according to the common law of this State. In its natural condition unaided by artificial means it is susceptible of public use above the falls for the purposes of commerce, for the floating of vessels, boats, rafts or logs."

In 51 Maine at page 256, it was held that:

"The Androscoggin River at Bethel and Berlin Falls the points there under consideration and between them, though not technically a navigable stream, is of sufficient capacity to float logs and rafts. Or, in other words, is a navigable stream, and as such by the laws of this State is deemed a public highway. Such rivers above the influence of the tide are regarded as public, not with reference to the property in the soil, but only with reference to the public use of the streams as highways."

From the foregoing, it would appear that the erection of the bridge (in question) would be an interference with the right of the public and, consequently, unlawful.

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Deputy Attorney General