

SUMMARY OF MARTIN V. BURNHAM

631 A.2d 1239 (Me. 1993)

by

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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

This case dealt with abandoned roads, the statutory presumptions surrounding them, and the prescriptive right to use the road. A road was laid out in Aroostook County in 1868. It was used and maintained until 1916 when further public funds and maintenance were discontinued. Nevertheless the road continued to be used by persons to access one or more large parcels owned by one of the parties. The other party has denied the party has the right to use the former public road. The parties stipulated that the road was effectively abandoned in 1946 (30 years after maintenance ended). One party maintains that a public easement remains while the other denies that a public easement remains. The Court determined that a public easement did not remain but a prescriptive easement was created.

The Law Court determined:

1. That 23 M.R.S.A. §§ 3026 & 3028 became effective on July 29, 1976. A public road that was effectively abandoned before that date does not retain a public easement.
2. A public road that is abandoned before 29 July 1976 causes all rights to revert to abutting owners (generally to the center line of the road).

As a consequence, the surveyor should be familiar with road laws and the local road records to protect their client's interests. To recognize problems with minimum information may be critical if a mortgage loan inspection is performed. In this case, the use of the former public road was sufficient for a prescriptive easement to arise. If the use had been discovered and stopped previously, the prescriptive easement could have been prevented.

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