

**RIPARIAN RIGHTS IN WISCONSIN: BRIEF  
ON THE NATURE AND SCOPE OF  
RIPARIAN RIGHTS IN WISCONSIN AND  
LIMITATIONS THEREON GROWING OUT  
OF THE PUBLIC NATURE OF THE WATER**

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Riparian rights in Wisconsin: brief on the nature and scope of riparian rights in Wisconsin and limitations thereon growing out of the public nature of the water by Eugene Allen Gilmore

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**EUGENE ALLEN GILMORE**

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*J. H. Knight*

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IN WISCONSIN AND LIMITATIONS THEREON GROWING  
OUT OF THE PUBLIC NATURE OF THE WATER

BY

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DECEMBER, 1909



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BRIEF BY

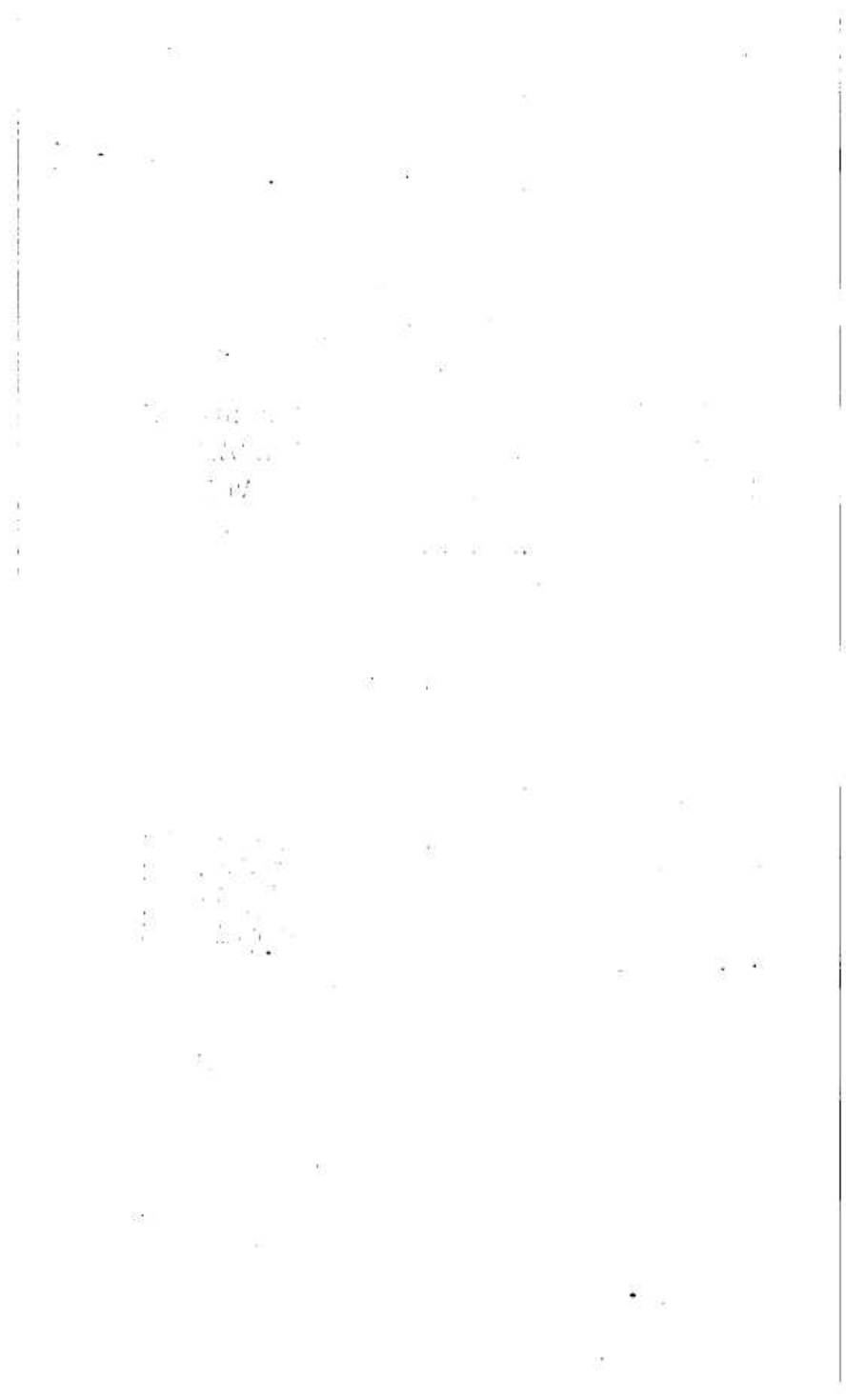
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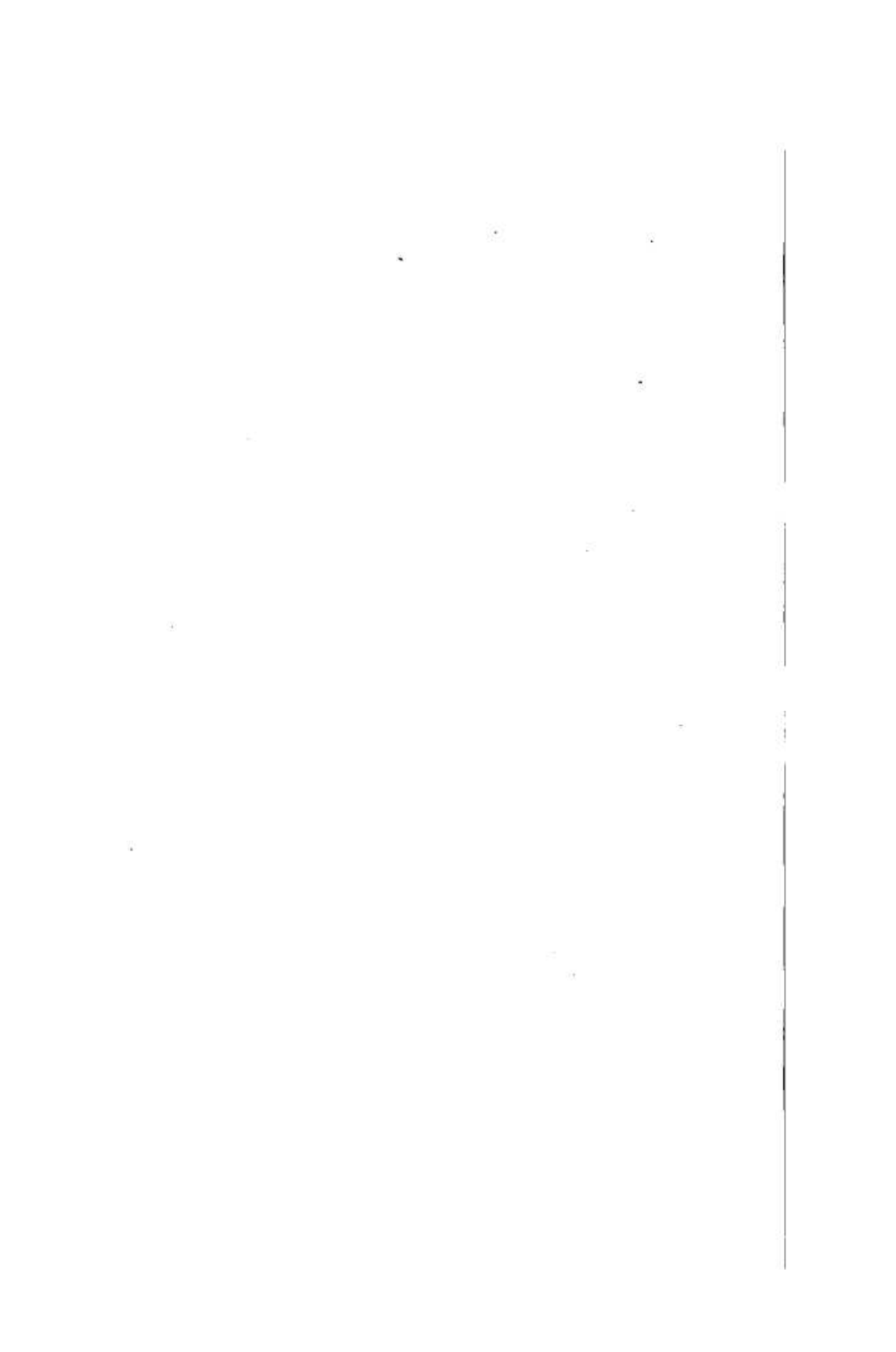
NOTE.—This brief in its present form was prepared at the request of the special joint committee of the Wisconsin legislature of 1909, appointed to investigate the subject of the control of water powers by the State and to recommend legislation thereon to a special session. An earlier brief prepared on the same subject at the request of members of the Wisconsin Senate Committee on Forestry has been incorporated here. The subject is discussed primarily with reference to the law of Wisconsin. No attempt has been made to examine exhaustively the decisions of other jurisdictions. They are considered in so far as they bear upon the local problem. The quotations from the treatises and cases have been made unusually full in order that the material might be readily accessible. While the subject-matter of the brief is in the main of local interest in Wisconsin, its fundamental propositions, however, are of general application in other jurisdictions.





## CONTENTS.

	Page.
1. Syllabus.....	7
2. Basis of a riparian right.....	16
3. Nature of riparian rights.....	17
4. Nature of the right essentially relative.....	18
5. Scope of riparian rights.....	19
6. Right to the benefit and advantage of the fall of the stream—the water power.....	19
7. The mill acts: Their necessity and purpose.....	21
8. Conclusion with respect to the relative rights of riparian owners to use water for power.....	23
9. Enjoyment of the riparian rights in relation to the rights of the public.....	23
10. Restrictions upon the riparian rights because of the public right of navigation.....	24
11. Dams or obstructions in navigable streams are nuisances.....	28
12. Conclusion drawn as to the effect upon the private riparian rights because of the existence of the paramount public right of navigation.....	32
13. Basis of state control.....	35
14. Restrictions upon the riparian rights because of the public right of use for purposes broader in scope than for mere navigation.....	37
15. The status of waters in Wisconsin: In general.....	38
16. Public and private waters.....	38
17. Extent of the crown title.....	39
18. Nontidal or fresh waters.....	40
19. Navigable in fact: Navigable in law.....	41
20. Basis of the public right of use beyond the tide.....	42
21. Status of waters in the United States.....	44
22. Public waters in Wisconsin.....	45
23. Origin and nature of the riparian owner's title to the bed.....	46
24. Burden of limiting the public right of use to navigation merely is upon the riparian proprietors.....	50
25. Scope of the public right of use.....	50
26. Public right of use is not an easement merely.....	51
27. Uses to which public waters may be put: Characteristics of public waters.....	53
28. Compensation to riparian proprietors.....	59
29. The right to improve public water for hydraulic power is a franchise.....	60
30. Cases distinguished.....	61



## THE NATURE AND SCOPE OF RIPARIAN RIGHTS IN WISCONSIN AND LIMITATIONS THEREON GROWING OUT OF THE PUBLIC NATURE OF THE WATER.

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### SYLLABUS.

1. The purpose of this brief will be to consider: (I) The nature and scope of riparian rights in general and their exercise and enjoyment, as between riparian proprietors, unaffected by the existence and exercise of rights in the public to use the water and without regard to whether the water be public or private; (II) to consider the nature and scope of such rights and their enjoyment as against the public, and the effect which the existence and exercise of the public rights of use of the water has in limiting or destroying the private riparian rights. Under II the limitation upon or destruction of the private riparian rights by the existence and exercise of the public right will be considered, (1) on the assumption that the public right of use extends no further than navigation, and fishing as an incident thereto; (2) on the assumption that the public right of use extends to the use of the water for all legitimate public purposes. Throughout the discussion the following classification of waters in Wisconsin is intended to be adhered to: (a) Nonnavigable and nonmeandered waters; (b) navigable nonmeandered waters; (c) navigable meandered waters. In considering riparian rights in general under I above, all statements and quotations as to the nature and scope of these rights are to be confined to those waters in which the public has no rights of use—such waters in Wisconsin as are included under (a) above—for it is only in such waters that the riparian rights exist unaffected by the rights of the public. In all waters included in (b) and (c), in which the public has a right of use, the existence and scope of the private riparian rights and their exercise is held to be in all respects subordinate to the existence and exercise of the public right. The riparian use of the water in class (c) for hydraulic power can only be made under express authority from the State. In class (b), until further legislation, where such use is practicable without the right of eminent domain, it may be made without express authority from the State, but subject at all times to state prohibition in the interests of the public rights of use.

2. Where land touches a body of water certain rights are recognized in the landowner to use the water in connection therewith, which rights are different from those belonging to the public generally. These are called riparian or bank rights. Such rights exist by virtue of the ownership of the bank in contact with the water, and not by virtue of the ownership of the soil under the water. Riparian rights can not grow out of the ownership of the submerged soil. The Wisconsin decisions recognizing the title to submerged soil