

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE LAW LIBRARY
AUGUSTA, MAINE

Coastal Island Registry Pilot Project:
Searching Titles to Maine's Coastal Islands

by Cheryl Harrington
Legal Intern
Coastal Island Registry
Bureau of Public Lands
Maine Department of Conservation

April 1975

Table of Contents

- I. Purposes behind the Project
- II. Sample Searched
- III. Sources
- IV. Problems
 - A. Island Descriptions
 - B. Mainland Descriptions
 - C. Probate Records
 - D. Tax Deeds and Multiple "Owners"
- V. Conclusion

Coastal Island Registry Pilot Project:
Searching Titles to Maine's Coastal Islands

I. Purposes behind the Project

The Coastal Island Registry conducted this pilot project in order to answer two basic questions: What is the quality of the individual coastal island titles being registered in compliance with the Coastal Island Registry Act (M.R.S.A., Title 33, Sections 1201-1217), and what is the number and types of interests Maine will acquire to islands registered improperly? The project was also intended to reveal problems common to tracing islands titles and to determine how subsequent searches could most effectively be conducted. Finally, it was hoped that this project would determine whether examining coastal island titles was in fact a feasible or necessary approach to accomplishing the purposes of the Registry Act.

II. Sample Searched

The coastal islands to which the titles were examined in the project are located in Sagadahoc County. Sagadahoc has 272 islands which have been assigned numbers by the Coastal Island Registry and are therefore within the scope of the act. Seventy-six of these islands were registered prior to December 31, 1974.

The geography of Sagadahoc County includes the Kennebec, Androscoggin and New Meadows Rivers, Merrymeeting Bay and several small rivers, bays and coves as well as the ocean which provided a representational cross-section of islands by size and location. In addition, the frequency of land transfers per island title was thought to be representative because

of the population density of this county, present and past.

III. Sources

Standards of Title published by the Maine Bar Association was used as the primary authority on what instruments to search and what defects to consider in evaluating the quality of individual titles. Standards of Title, however, is designed to aid in determining "market-able titles" as between private buyer and seller, whereas the Registry project was primarily concerned with determining which islands presently belong to the State or in which the State has a potential interest without the occurrence of any further recorded transfer of title. Therefore, the title examinations went beyond or stopped short of particular recommended standards depending on the possibility or probability of the State acquiring an interest in a particular island as the result of a particular transaction.

For example, the project examined titles back to 1826, the backward reach of the records in the Sagadahoc Registry of Deeds, which is a period greater than the suggested Bar standard of forty years and then to the first warranty deed beyond that point. The Bar standard usually involves a shorter period to be searched. The reason for the extended search period was to gain as complete a picture as possible of how islands were originally acquired by private hands, and how many may have been appropriated by illegal means. The project plan was to search back to the single original source of title for each island, but the increased complexity of tracing individual titles through more and more remote periods of time rendered this goal unfeasible in light of the time limitations of the project.

The Bar Standards also require the use of affidavits to supplement weakness in title due to a lost or unrecorded deed. These were not

sought by the project unless it was determined that the State did in fact have a claim to a particular island as the result of such unrecorded title. Information that might later become important to the State for use in litigation was acquired in accordance with the Bar Standards. However, much word of mouth information was sought and used in piecing titles together. For example, known title holders were often called in attempts to locate the names of deceased relatives from whom the islands might have been inherited.

The starting point in most searches was the information provided on the Coastal Island Registry registration form. In other cases, tax roll information was used, and when either of these failed to lead into the title chain, local persons knowledgeable in the real estate of the region generally were consulted. Often a person familiar with a locality or particular island was able to supply the missing name or key date that led into the chain of title. For example, after the title searcher had hit a dead end on piecing together interests acquired in the 1920's by a certain Mr. Brown, a local inhabitant provided the information that old Mr. Brown, known for his taste for the ladies, had had a girlfriend who owned property near the island in question. A check of the "girlfriend's" probate records yielded the missing link to Mr. Brown's title.

Word of mouth sources were used in at least ten percent of the titles examined.

Tax maps located in the municipalities, generally with the town tax collector, and land plans filed in the Registry of Deeds were also important sources for identifying and locating individual islands and their possible owners. Plans are indexed by name of town, area, owner at the time the plan was drawn and/or surveyor. These plans were often consulted by looking through the index for plans for the area generally,

even though the particular plan would not be part of the title itself, i.e. not referred to in any deed in the chain of title. For example, A might have his property surveyed and by incidental means an island owned by B was included in the plan drawn, simply to define better the boundaries of A's property.

IV. Problems

A. Descriptions

The most recurrent problem in island titles is the lack of accurate descriptions of the islands in the conveying instruments. Frequently there is no description. The question raised by such instruments is, of course, whether or not that instrument did in fact convey that particular island. The evaluation process discussed below is crucial in the answer to this question.

The best described islands are those containing fifty acres or more, located either a substantial distance to sea (one quarter of a mile or more), or centered in river channels away from shore. These large islands are usually described with sufficient reference to details of size, name and location in relation to the mainland to locate them readily on the Coastal Island Registry maps.

Small islands, particularly those containing four acres or less and located along ocean or river shorelines or on tidal flats, are those most often not described. Commonly, claims to these islands were based upon the island's adjacent position to mainland property which the claimant owned. Small islands barred to larger islands at low tide were also frequently claimed by owners of the adjacent property. Language such as "and all the flats adjoining" or "and all the islands in the Kennebec"

was commonly the extent of the description for these small islands.

Oftentimes an island is specifically described in a recent conveyance, but no description can be found further back in the chain of title. The question arises as to whether the precedent conveyances were understood and intended to convey the island, or whether an enterprising owner of nearby mainland property simply took the initiative at some more recent point and decided that the island should belong to him, even if it did not, and subsequently conveyed it to another.

The determination of these questions is crucial to the functioning of the Coastal Island Registry. The Registry Act looks to whether "incidents" of title have been exercised within the past forty years. A recorded transfer is such an "incident" but cannot serve to prevent title from vesting in the State if the transfer itself is determined to be illegal or fraudulent or a nullity. Although the standards to be employed under the definition of the term "incident" are vague, and the whole statutory scheme raises serious constitutional questions of taking with regard to due process of law, as the Registry Act now operates an "incidentless" island will become property of the State.

B. Mainland Descriptions

Another important aspect of legal descriptions considered when the island is not mentioned in the instrument is the distance between the island and the mainland or other property that is described in the instrument. Under Maine law, a description of shoreline property that is not otherwise limited in the call of the bounds, will run on the shore side to low water mark or 100 rods from high water mark, whichever is less, and include all the flats within that mark. Many islands not described in the conveyance of mainland property pass to the adjacent owner

under this rule of law, although no case has been found which states that islands upon those flats pass with the flats. The Registry has assumed that they do.

The examination of title to any mainland property shares some of the same problems of vagueness found in island titles and the older the deed the more likely that its description will be in reference to land held by others long deceased or to natural boundaries long since deteriorated. In tracing these titles beyond the turn of the century it was sometimes necessary to examine the titles to adjacent property as well in order to determine the boundaries and distinguish the original parcel being searched.

Marsh land descriptions, considered because some islands are located in the coastal marshes, are the most difficult to locate. There are few distinguishable natural boundaries with which to pin down a particular description and invariably many "wrong" pieces are examined before finding the "right" piece.

C. Probate Records

Probate records are generally good back to about 1930, but beyond that date probate was less frequently used by the decedent's family. The records which do exist, particularly the older records, have weak descriptions of the real property owned by the decedent, such as "land in Woolwich." Islands are often not mentioned in the inventories even though other recorded instruments indicate that an island had been conveyed to the decedent and not conveyed out by him during his lifetime.

Out-of-state probate records are often incomplete. If a question of determining the heirs could not be answered by other means, such as

by statements in deeds from the alleged-heirs, known or guessed heirs were contacted for additional information.

D. Tax liens and multiple "owners"

Islands acquired by tax deed from a municipality also present some difficulty. If the owner at the time the tax lien attached purchased the property at the tax sale after execution upon the lien there is generally no title problem. However, if another person purchased at the sale it is necessary to verify the validity of the lien, execution and sale in order to be sure title passed to the new purchaser. Town records may have to be consulted in this process. Also, in some cases, town tax records had to be consulted in order to determine who the owner was at the time the lien attached as the recorded tax liens do not always identify the owner, but often only the property against which the lien was placed.

Multiple record owners to the same island each with an apparently valid chain of title were also found. In some instances both "owners" have registered, othertimes only one. A double check on the description and location revealed in some cases that the claims were not in fact to the same island. Mistakes in locating the island on the Registry maps contributed to the confusion.

The tax deed situation described above in which the owner prior to the tax lien continues to convey after execution upon the lien can also provide two chains of title, but here one chain is usually clearly invalid.

Conveyances from the State of Maine provided the source of the second

chain of title in other instances, the origination of the first chain extending further back in time. During the late 1800's Maine auctioned off many islands believed to be State-owned which already had private owners or at least claimants with an earlier source of title. Thus the deed given at auction by the land agent for the State provided the source of the second title chain.

Other multiple claims of ownership arise when a grantor gives an unrecorded deed and his heirs, having no knowledge of the grantor's conveyance, assume that the property has passed to them and later convey it themselves. As many of the islands are uninhabited and unused except for sporadic boat landings or perhaps picnics, it is entirely possible for one set of "owners" to be quite unaware of the other set of "owners". In these situations, the islands were sometimes registered by the "owners" with the weaker title claim, and the earlier, stronger claim was uncovered during the course of the title examination.

V. Conclusion

Title to coastal islands must be examined in order for the Coastal Island Registry Act to accomplish its purposes. Of eighty-three coastal island titles searched in the pilot project, it appears that two islands belong to the State outright and portions of ten other islands also belong to the State.

These portions range in size from ninety acres of a one hundred plus acre island to a 125' by 150' lot on a smaller island. If the results of the pilot project are representative, this finding would indicate that between five and ten percent of all registered islands do at

least in part belong to the State.

All island titles should be searched as there is no other way of determining who in fact is the owner of any particular island and whether or not the State has any legal interest in that island. Searches should, however, be conducted in order of priority of individual island importance to the State. That is, criteria should be developed as to environmental, educational, historical, recreational, etc. importance of each island, and those islands with the greatest resource value should be the first to have their titles searched. In this way those islands which are in greatest need of protection among those which do belong to the State will be the first identified as such and will be in a position to receive as soon as possible the planning and management attention needed to protect important resources.

Titles should be examined back to a reasonable date which would convincingly establish private claims of ownership, yet not require every title to be searched an inordinate period of time. The last attempt at surveying ownership of the islands in a comprehensive manner was in 1913 which is the year in which Maine was by statute prohibited from further conveying any State-owned islands. It would be logical, therefore, to select the 1913 date as the cut-off point for the searches. This, of course, would not provide for the discovery of those cases in which islands were held by alleged private owners prior to that date in derogation of the State's actual ownership.

Another practical problem may exist for any claim of State ownership based on a title search which goes back beyond the early part of this century in that the courts may be reluctant to find a title to a coastal island as vested in Maine in cases where that island's title has of

record been vested in private hands well beyond the forty year period required in determining the marketability of property titles in general. A question also exists, along these same lines, as to the effect of Maine's Marketable Title Act (14 M.R.S.A. §815) upon the State when it is a party to litigation under that act.

There is also a public policy angle to be considered in attempting to ferret out and reclaim for the State those islands which have been as of record in private hands for an extended period of time. An attempt by the State to assert title to these islands is likely to create more animosity among the island-claiming public than it is perhaps worth.

The islands which were found to belong to the State in the pilot project were all found by searching the years after 1913; this may be further indication of the limited usefulness in going back any further than that date. July 13, 1913, was the effective date of the mentioned statute prohibiting further conveyances; that is the suggested cut-off date for future searches.

Interns should be trained and used to examine island titles. The process of abstracting a title and running down sources of information requires a fairly bright and persevering mind, but does not really require any specialized previous legal training. Law students would, of course, be ideal for use as interns as they would have some general background relating to land transactions. The most important aspect of the examinations is that they be uniformly carried out and that some person with greater legal and title experience be available to evaluate the abstracted materials and supervise the interns. Abstract forms were developed for use in the pilot project. Use of these forms in future searches would help in maintaining uniformity in the information gathering process.