

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

May 11, 1934

Mr. A. M. G. Soule
Department of Agriculture
Augusta, Maine

Dear Mr. Soules:

In response to your recent communication with reference to the occupation or clamming, or digging clams to low water mark, I am pleased to inform you that the ordinary presumption is that flats go with the upland.

By force of the Colonial Ordinance of Massachusetts, 1641-7, the owner of upland adjoining tide water prima facie owns to low water mark; and does so own, in fact, unless the presumption is rebutted by proof to the contrary."

In any given case the conveyance of the land would govern. It has been held by our court that the conveyance "to the shore and thence by the shore" ordinarily excludes the flats.

It has also been held that a deed which bounds one by the bank, excludes the flats.

The expression "to the head of a cove, thence around the cove to the western side of the cove" excludes the cove and the flats.

A description, "Beginning at a spruce tree on the shore near the head of Gilpatrick's cove, so called, and running west across the point to the shore; thence southeasterly and northwardly running the shore to the point of beginning, with all the privileges thereto", excludes the flats.

It has been further said that "flats do not pass as appurtenances to the upland, when they are outside of the expressed boundaries in the grant, even if the grant contains the words 'together with the privileges and appurtenances thereto belonging'".

A deed conveying to the water or by the sea carries to low water mark in all tide waters.

Very truly yours,

Deputy Attorney General

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