

## *Parker v. Durham*, 258 Ga. 140 (1988)

OCGA § 44–8–5, providing that where the river is navigable, the rights of the owner of adjacent land extend only to the low-water mark of the riverbed, became effective with the adoption of the Code of 1863. In Florida Gravel Co. v. Capital City Sand Co., . . . , this court held that OCGA § 44–8–5 “will not be construed to apply to grants of land by the State prior to the adoption of that code.” Under this authority, appellee Durham, who traces her chain of title to a grant from the state in 1857, owns the entire bed of the Hughes Old River.

“By common law the right to take fish belongs essentially to the right of soil in the streams where the tide does not ebb and flow. If the riparian owner owns upon both sides of the stream, no one but himself may come within the limits of his land and take fish there. The same right applies so far as his land extends to the thread of the stream, where he owns upon one side only. Within these limits, by the common law, his rights of fishery are sole and exclusive.” . . . Therefore, Durham holds the exclusive right of fishery in the Hughes Old River, . . . .