

128. — The owner of the dominant property is bound to exercise the servitude strictly according to the law or to the terms of the contract, and in the least injurious way to the servient property.

F. 702. G. 1020. M. 152. S. 737.

*Illustrations : — I. A has dug a canal on B's land for the purpose of irrigating A's land. Later on, A wants to enlarge the canal so that he can use it as a water way; B objects thereto; A enters an action against B. A's claim must be dismissed because he cannot be allowed (under the agreement entered into) to dig on B's land a canal wider than necessary for irrigation purposes. He can be allowed to do so only by virtue of a new agreement entered into with B to that effect.*

*II. A can be required by B to dig the irrigation canal on such part of B's land as is the most convenient to B, even though A be obliged thereby to make the canal larger and to incur higher expenses to dig it, e.g. B can require that A dig the canal, not across the ornamental garden in front of B's house, but along the edge of such garden, although the length of the canal be doubled thereby.*

*III. A, instead of letting the water run slowly through the canal according to the ebb and flow of the tide, builds a sluice and works it in such a way that he provokes slides on the sides of the canal and is about to cause the fall of several big fruit trees standing on B's land. B may require from A that he works the sluice in such other way as will not cause injury to B's land.*

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129.—The owner of the dominant property is entitled to make at his own expense on the servient

property any work that may be necessary for the upkeep and use of the servitude.

He is bound to keep such work in a state of good repair inasmuch as the interest of the servient property may dictate.

The owner of the servient property is entitled to compensation if he is injured by an alteration in the condition of his immovable caused by such work or by its not being repaired.

He may use such work provided he does not thereby hinder the exercise of the servitude and he shares in the costs of upkeep and repair in proportion to the benefit which he derives therefrom.

F. 697, 698. S. 737, 741. G. 1021, 1020 (2°). J. 288 (for the last paragraph.) M. 147. S. 737. 741.

*Illustration : — §1. — A has been allowed to lay electric wires on B's land. He is entitled, not only to lay the wires, but also to do on B's land, at his own expense, all such work as may be necessary to keep the electric line in good order; e.g. to change the posts, isolators, wires, etc. when they are worn out.*

*§ 2. — On the other hand, he is bound to do, on B's land at his own expense, all such work as may be required by the interest of B; e.g. if a post is in such a bad condition as it threatens to collapse and damage B's house or garden, or to cause a fire or any other accident, he must change it.*

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*§ 3.—If the works made by A have caused an alteration in B's land, e.g. if several posts have been erected*

across B's land and some trees felled on the same land to allow the laying of the wires, or if the workmen repairing the line have caused a damage to B's land, e.g. if they have spoilt flowers, plants or crops on B's land, B is entitled to compensation.

*If A has failed to do the works necessary in the interest of B's land and some damage has been caused to B's property thereby, e.g. if a post has fallen and damaged the roof of B's house, B is also entitled to compensation from A.*

§ 4. — B can take advantage of the laying of an electric line on his land to have an electric accommodation made for himself, provided that the necessity to supply electric power to two places does not render useless the installation originally made by A and does not entail a new installation, and provided further that B shares in the expenses of upkeep and repair of the line. For instance, if he takes advantage of the whole installation made by A on his land and consumes as much electricity as A, he shall have to stand half the aforesaid expenses ; if he takes advantage of part only of the line laid by A, he shall have to pay only a third, or a quarter, or a fifth of the said expenses, according to circumstances.

130. — In any case where the exercise of a servitude is subject to payment of a compensation, the owner of the servient property is not bound to suffer such exercise until proper security for the payment of compensation has been given by the owner of the dominant property.

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