

TITLE II.

Real servitudes established by Law.

135. — Servitudes established by law can be exercised at any time in the conditions provided by law and without being registered.

The conditions provided by law may be altered by a contract, but such contract must be registered on the Land Register.

G. 924. M. 109, 2°. S. 680.

Illustration : — *A's land is subject to a right of way to the benefit of B's land. A, having left his land waste for many years, B uses a way which he has built across the middle of A's land. Later on A, who wishes to enclose his land and erect a house on it, agrees with B that B will build a new way along one of the boundaries of A's land and give up the use of the original way. This agreement can be set up against a third person, e.g. the buyer of B's land, only if it has been registered in the Land Register.*

136. — The manner of exercising a servitude established by law shall, in case of dispute thereanent, be inferred from the origin and nature of the servitude.

Illustration: — *An electric line has been erected on A's land to the benefit of B's land. B's servants use to pass over A's land to maintain and repair the line. B avails himself of such fact to pretend that he has a right of way on A's land. If it appears from the enquiry made by the Court that B's servants have never been allowed to pass*

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over A's land except for the purpose of maintaining and repairing the line, B's claim must be dismissed.

137. — The Government can institute for the benefit of the neighbouring community a right to use for domestic or agricultural purposes the water of a well or pond upon private property; provided that the owner be never deprived of such quantity of water as will satisfy his reasonable requirements.

In such case, the owner is entitled to compensation for the institution and exercise of the servitude. This compensation shall be fixed in the same way as in the case of expropriation.

S. 709. F. 642.

138. — The owner of an immovable through which a water-course runs is entitled to alter the course of such water as he thinks fit, but he is bound to restore the water to its natural course at the place of exit.

F. 644, laws 29 April 1845, 8 April 1898. I. 543, 613. J. 219, 222.

139. — The owner of an immovable through or along which a water-course runs is entitled to use the water for his requirements but he is bound not to draw so much of it that the owners of other immovables along the same water-course cease to get the quantity of water which is necessary for their normal requirements.

140. — The owner of an immovable along which a water-course runs is entitled to build a dam across such water-course and to rest it on the opposite bank provided

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140.—The owner of an immovable along which a water-course runs is entitled to build a dam across such water-course and to rest it on the opposite bank provided

that no serious injury to other immovables be likely to result therefrom, and he pays compensation for minor injuries if any.

Siam, Laksana Betset 18 to 21. I. 613. J. 222.

Illustration:—A, the owner of a piece of land situated along a watercourse, wishes to build a dam across that watercourse for the purpose of better irrigating his land. If it appears that the building of the dam and the consequent rise of the water level will cause the flooding of the whole or of the greatest part of another bordering land situated upstream, A cannot build the dam. If it appears on the contrary that the rise of the water level will cause the flooding of only a very little portion of another bordering land situated upstream, A may build the dam, but he must pay to the owner of the land upstream proper compensation for the loss of the flooded portion of that land.

141. — In any case the Government is entitled to restrict the rights mentioned in the three foregoing Sections as far as water-ways of the public domain are concerned.

142. — When an immovable has no access to any public road or has an access which is obviously inadequate to the reasonable requirements of its owner, the latter has a right of passage on the adjoining immovables to the nearest public way.

This right of passage can be claimed only against the owner of the adjoining land which will be the least injured thereby.

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