

CHAPTER X.

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EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

Part I.—Extinction of easements by miscellaneous methods.

THERE still remain to be enumerated certain miscellaneous methods of extinction which, obvious in themselves, hardly require more than passing notice.

They are the following :—

(a) *Extinction by dissolution of right of servient owner.*

**E. Act,
37.**

Section 37 of the Indian Easements Act provides that when, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient tenement, the easement is extinguished.

Exception.—Nothing in the section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

(b) *Extinction by revocation.*

By section 39 of the Indian Easements Act an easement is ^{1. E. Act} extinguished when the servient owner, in exercise of a power ^{s. 39.} reserved in this behalf, revokes the easement.

(c) *Extinction of limited easements.*

An easement acquired for a limited period is extinguished by the completion of such period.¹

Similarly an easement which is acquired subject to an express² or implied condition³ is extinguished by the fulfilment of the condition.

Thus where an easement passed by implication of law to a lessee on a lease to him of the dominant tenement for a period of twenty-one years subject to a condition of re-entry by the lessor, it was held that on determination of the lease under such condition and recovery of possession by the lessor's vendee, the easement was extinguished.⁴

So an easement created for a particular object is extinguished when the object of its existence disappears.

Thus an easement to take water for the purpose of filling a canal ceases when the canal no longer exists.⁵

(d) *Extinction of easements of necessity.*

An easement of necessity is extinguished neither by alteration of the dominant tenement⁶ nor by non-user,⁷ but only by the disappearance of the necessity.

This is almost a self-evident proposition and scarcely needs authority to support it.

*Holmes v. Goring*⁸ clearly establishes the law in this respect ^{Holmes v. Goring.} and decides that a way of necessity is limited by the necessity

¹ *Lord Dynevor v. Tennant* (1886), L. R., 32 Ch. D., 375; 55 L. J. Ch., 817; 1. E. Act, s. 40.

² 1. E. Act, s. 40.

³ *Beddington v. Atlee* (1887), L. R., 35 Ch. D., 317; 56 L. J. Ch., 655.

⁴ *Beddington v. Atlee*.

⁵ *National Guaranteed Manure Co. v. Donald* (1859), 4 H. & N., 8.

⁶ See 1. E. Act, s. 43, cl. (c).

⁷ See 1. E. Act, s. 47.

⁸ (1824) 2 Bing., 76.

which creates it, and that if subsequently to the acquisition of the easement it becomes possible for the dominant owner to reach the same point by another way over his own land, the way of necessity ceases.

To the same effect is section 41 of the Indian Easements Act.

(e) *Extinction of useless easements.*

I. E. Act,
s. 42.

Under section 42 of the Indian Easements Act an easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner. It would be more accurate to say "dominant tenement."¹

(f) *Extinction on permanent alteration of servient tenement by superior force.*

I. E. Act,
s. 44.

According to section 44 of the Indian Easements Act an easement is extinguished where the servient tenement is so permanently altered by superior force that the dominant owner can no longer enjoy it.

The illustrations to the section explain the application of the rule. A river changing its course from the servient owner's land to some one else's will, of course, extinguish the dominant owner's right to fish in it or any other easement relating to water.

And a path over which there is a right of way may be permanently destroyed by an earthquake.

If the way destroyed is a way of necessity, the dominant owner has the right to another, and if the servient owner fails to set it out, he may do so himself.

(g) *Extinction by destruction of either tenement.*

An easement is extinguished when either the dominant or servient tenement is completely destroyed.²

Thus if the servient tenement consisted of a strip of land on the sea-shore, a permanent encroachment of the sea to the extent of the strip, would put an end of any easement existing over it.

¹ See *supra*, Chap. II, and I. E. Act, s. 4.

² I. E. Act, s. 45.

(h) *Extinction of accessory easements.*

If the principal easement ceases, the accessory easement must also come to an end.¹

Thus if a man has the right to work minerals, and the right comes to an end through exhaustion by the minerals, the accessory easement of way over the servient tenement for the purpose of removing the minerals disappears also.

Part II.—Suspension and Revival of Easements.

It has been seen that when the dominant and servient tenements are united in the same person, an easement is extinguished by unity of seisin.²

Unity of possession, that is to say, anything that falls short of unity of seisin, does not cause the extinction of an easement but its suspension.³

As Alderson, B., said in *Thomas v. Thomas* :⁴—“ If I am seized of freehold premises, and possessed of lease-hold premises adjoining and there has formerly been an easement enjoyed by the occupiers of the one as against the occupiers of the other, while the premises are in my hands, the easement is necessarily suspended, but it is not extinguished, because there is no unity of seisin ; and if I part with the premises, the right not being extinguished, will revive.”

Upon a severance of the tenements the easement, whether it be an easement of necessity or any other kind of easement, revives.⁵

Section 51 of the Indian Easements Act deals with various methods of revival which may be classified as follows :—

- (1) Restoration within twenty years by deposit of allusion of the dominant or servient tenement which has been completely destroyed—cl. (a).
- (2) Rebuilding of servient tenement on the same site within twenty years—cl. (b).

¹ I. E. Act, s. 48.

² See Chap. IX, Part II, A.

³ *Thomas v. Thomas* (1835), 2 Cr., M. & Ros., 34 ; *Modkoooodun Dey v. Bissonauth Dey* (1875), 15 B. L. R., 361 ;

I. E. Act, s. 49.

⁴ 2 Cr., M. & Ros., p. 41.

⁵ *Buckby v. Coles* (1814), 5 Taunt., 311 ; *Thomas v. Thomas* (1835), 2 Cr., M. & Ros., 34 ; I. E. Act, s. 51, last para.

- (3) Rebuilding of dominant tenement on the same site within twenty years, in such a manner as not to impose a greater burthen on the servient tenement—cl. (c).
- (4) The setting aside by a decree of a competent Court of the grant or devise by which the unity of ownership was produced.
- (5) Revival of easement of necessity when the unity of ownership ceases from any other cause.

This, strictly speaking, is hardly in accord with English notions which point to a fresh creation of the right after extinction, and not to a revival.¹

- (6) Revival of suspended easement if cause of suspension is removed before the right is extinguished by non-user under section 47.

Under this paragraph an easement which has been suspended by unity of possession, revives.

I. E. Act, s. 50.
Servient owner not entitled to continuance of easement.

Section 50 of the Indian Easements Act negatives any right of the servient owner to require that an easement should continue.²

When entitled under I. E. Act to compensation on discontinuance of easement.

It also negatives his right to demand compensation for damage caused by its extinguishment or suspension if the dominant owner has given him such notice as will enable him, without unreasonable expense, to protect the servient tenement from such damage. Where such notice has not been given, the servient owner will be entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

As regards the right to compensation the section in this respect deviates from the English law as declared in *Mason v. The Shrewsbury and Hereford Railway Co.*³

The illustration to the section is obviously framed on the facts of this case.

¹ See *Holmes v. Goring* (1824), 2 Bing., 76 ; and Chap. IX, Part II, A.

II and Ch. III, Part III.

³ (1871) L. R., 6 Q. B., 578.

² See this subject considered in Chap.