French Civil Code

BOOK II. Of Property, and the Different Modifications of Property

Decreed the 25th of January, 1804. Promulgated February 4th.

TITLE IV.

Of Servitudes or Manorial Services.

Decreed the 31st of January, 1804. Promulgated the 10th of February.

637. A servitude is a charge imposed upon an estate for the use and benefit of an estate belonging to another proprietor.

638. Servitude does not establish any pre-eminence of one estate over another.

639. It is derived either from the natural situation of places, or from obligations imposed by law, or from agreements between proprietors.

CHAPTER I.

Of Servitudes derived from the Situation of Places.

640. Inferior lands are subjected, as regards those which lie higher, to receive the waters which flow naturally therefrom to which the hand of man has not contributed. The proprietor of the lower ground cannot raise a bank which shall prevent such flowing. The superior proprietor of the higher lands cannot do any thing to increase the servitude of the lower.

641. He who possesses a spring within his field may make use of it at his pleasure, saving the right which the proprietor of a lower field may have acquired by title or by prescription.

642. Prescription in such case can only be acquired by an uninterrupted enjoyment during the space of thirty years; to be computed from the moment at which the proprietor of the lower field has made and completed the works apparently designed to facilitate the fall and course of the water within his property.

643. The proprietor of a spring cannot change the course thereof when it supplies the inhabitants of a commune, village, or hamlet, with water for their necessary use: but if the inhabitants have not acquired the use of it by prescription or otherwise, the proprietor may claim an indemnity, to be settled by competent persons.

644. He whose property borders on a running water, other than that which is declared a dependency on the public domain by article 538, under the title *"Of the Distinction of Property,"* may employ it in its passage for the watering of his property.
He whose estate is intersected by such water, is at liberty to make use of it within the space through which it runs, but on condition of restoring it, at the boundaries of his field, to its ordinary course.

645. If a dispute arise between proprietors to whom such waters may be useful, the courts, in pronouncing their judgment, must reconcile the interest of agriculture with the respect due to property; and in all cases particular and local regulations on the course and use of waters must be observed.

646. Every proprietor may compel his neighbor to determine the boundaries of their contiguous properties. Such determining of boundaries must be at their common

expense.

647. Every proprietor may enclose his estate, saving the exception contained in article 682.

648. The proprietor who is desirous of enclosing his land, loses his right to the free pasturage and waste land, in proportion to the land which he withdraws.

CHAPTER II.

Of Servitudes established by Law.

649. Servitudes established by law have for their object the public benefit, or that of the commune, or of private persons.

650. Those established for the public benefit, or that of the commune, have for their object footways by the side of navigable rivers or streams admitting floats, the construction or reparation of roads, and other public works, or those relating to the commune.
Every thing relating to this species of servitude, is determined by the laws, or by particular regulations.

651. The law subjects proprietors to different obligations as respects each other, independently of all convention.

652. Part of these obligations is regulated by the laws touching rural police.
Others relate to party-walls and ditches, and the cases in which supporting walls are necessary, to views over the property of the neighbor, to the dropping of water from house-eaves, to rights of way.

SECTION I.

Of the Party-Wall and Ditch.

653. In towns and fields every wall which serves as a boundary between buildings, even to its base, or between courts and gardens, or even between enclosures in the fields, is presumed party, if there be no title or mark to the contrary.

654. It is a mark of non-partition when the summit of the wall is straight and perpendicular with its base on one side, and presents on the other an inclined plane. Again, when there is on one side only a coping, or ridges, and shouldering-pieces of stone, which might have been placed there in building the wall.
In such cases the wall is deemed to belong exclusively to the proprietor on whose side are the eaves or corbels, and ridges of stone.

655. The reparation and rebuilding of the party-wall are at the expense of all those who have claim thereto, and in proportion to the claim of each.

656. Nevertheless each joint-proprietor of a party-wall may relieve himself from contributing to the reparations and rebuilding by abandoning his claim of partition, provided that the party-wall do not sustain a building belonging to him.

657. Every joint-proprietor is at liberty to build against a party-wall, and to place beams and joists in the whole thickness of the wall, except fifty-four milli-metres (two inches) without prejudice to the right which his neighbor has to cause the beam to be reduced by the chisel to half the thickness of the wall, in case the latter shall desire to fix beams in the same place, or to build a chimney against it.

658. Every joint-proprietor may cause a party-wall to be built higher, but he must alone defray the expense of such elevation, of the necessary reparations above the height of

the common enclosure, and further-more of an indemnity against the expense in the rate of the additional building and according to the value.

659. If the party-wall is not in condition to support the additional building, he who desires to elevate it must cause it to be entirely rebuilt at his own expense, and the excess in thickness must be taken from his own side.

660. The neighbor who has not contributed to the elevation may acquire right of partition by paying half of the expense it has cost, and the value of one moiety of the soil furnished for the excess of thickness, if there be any.

661. Every proprietor joining a wall has in like manner the power of rendering it common, in whole or part, by paying to the owner of the wall the half of its value, or the half of the value of that portion which he desires to make common, and the half of tbe value of the soil on which the wall is built.

662. One of two neighbors must not form in the body of a party-wall any hollow, nor apply or lean any work against it without the consent of the other, or, on his refusal, without having directed, under the advice of competent persons, the necessary means for erecting such new work without injury to the rights of the other.

663. Each inhabitant of a town or suburb can compel his neighbor to contribute to the construction and reparation of the enclosure forming the boundary of their houses, courts, and gardens situated within the said towns and suburbs: the height of the enclosure shall be fixed according to particular regulations or constant and acknowledged usages; and in defect of such usages or regulations, every boundary wall between which two neighbors shall for the future be constructed or rebuilt, must be at least thirty-two decimeters (ten feet) high, including tbe coping, within towns containing fifty thousand souls and upwards, and twenty-six decimeters (eight feet) in others.

664. When the different stories of a house belong to different proprietors, if the titles to the property do not regulate the mode of reparations and reconstructions, they must be made in manner following: The main walls and the roof are at the charge of all the proprietors, each in proportion to the value of the story belonging to him. The proprietor of each story makes the floor belonging thereto.

The proprietor of the first story erects the staircase which conducts to it; the proprietor of the second story carries the stairs from where the former ends to his apartments; and so of the rest.

665. On the rebuilding a partition-wall or a house, the servitudes, active and passive, continue with respect to such new wall or house, without power nevertheless to increase them, and provided the reconstruction have taken place before a right by prescription has been acquired.

666. All ditches between two estates are presumed common if there be no title or proof to the contrary.

667. It is a proof that a ditch is not common when the bank or earth thrown up is found only on one side of it.

668. The ditch is deemed to belong exclusively to him on whose side the earth is found to be thrown up.

669. A common ditch must be maintained at the common charge.

670. Every hedge which separates two estates is reputed common, unless there be only one of the estates in an enclosed condition, or unless there be vouchers or sufficient possession to prove the contrary.

671. It is not allowable to plant trees of lofty trunk, but at the distance prescribed by particular regulations actually existing, or by constant and acknowledged usages; and in default of regulations and usages only at the distance of two metres from the line which separates the two estates in the case of trees of lofty trunk, and at the distance of half a metre in the case of other trees and quick hedges.

672. A neighbor may require trees and hedges planted at a less distance to be pulled up. He whose property is overshadowed by the branches of his neighbor's trees, may compel the latter to cut off such branches.
If it be the roots which encroach on his estate, he has a right to cut them therein himself.

673. Trees which are found in a common hedge are common like the hedge ; each of the two proprietors has the right to require that they should be felled.

SECTION II.

Of the Distance and intermediary Works required for certain Buildings.

674. He who causes a well or a cesspool to be dug near a wall partition or not, He who wishes a chimney to be built there, or a hearth, a forge, or oven, or a kiln, To build a stable against it,
Or to form against such wall a magazine of salt, or a heap of corrosive substance, Is obliged to leave the distance prescribed by particular regulations and usages on subjects, or to form the works prescribed by the same regulations and usages, in order to avoid injury to his neighbor.

SECTION III.

Of Views ever a Neighbor's Property.

675. One of two neighbors cannot without the consent of the other form in the partition-wall any window or aperture, in any manner whatsoever, even a fanlight.

676. The proprietor of a wall which is not common, joining immediately the estate of another, may form in such wall lights or windows of wire-lattice, and fanlights. These windows must be furnished with a lattice-work of iron, the meshes of which shall extend to an opening of one decimeter, (about three inches eight lines at the most) and with a dormant window.

677. These windows or lights must not be less than twenty-six decimeters (eight feet) above the floor or base of the chamber which is desired to be lighted, if it be the ground-floor, and nineteen decimeters (six feet) above the floor for the upper stories.

678. A party must not have direct views nor windows for sight, nor balconies or other similar projections over the estate enclosed or unenclosed of his neighbor, within the distance of nineteen decimeters (six feet) between the wall on which they are formed and the aforesaid estate.

679. A party shall not have side or oblique views over the same estate within the distance of six decimeters (two feet).

680. The distance mentioned in the two preceding article. is computed from the exterior basement of the wall in which the aperture is made, or if there be balconies or other similar projections from their exterior line to the boundary line of the two properties.

SECTION IV.

Of the Droppings of House-Eaves.

681. Every proprietor must so form his roofs, that the rain-water shall drop upon his own land or the public way; he must not suffer it to flow upon his neighbor's land.

SECTION V.

Of the Right of Way.

682. Every proprietor whose fields are surrounded, and who has no outlet to the *public road,* may claim a passage over the fields of his neighbors for the agricultural purposes of his estate, on condition of an indemnity proportioned to the injury which he may occasion.

683. The road ought regularly to be taken on that side where the passage is the shortest from the farm surrounded to the public highway.

684. Nevertheless it ought to be fixed in that spot where it can occasion the least injury to him over whose farm it is granted.

685. The action for indemnity, in the case provided for in article 682, may be prescribed against; and the road must be continued though the action for indemnity be no longer admissible.

CHAPTER III.

Of Servitudes established by the Act of Man.

SECTION I.

Of the different Species of Servitudes which may be established over Property.

686. It is allowed to proprietors to establish over their property, or in favor of their property, such servitudes as seem good to them, provided nevertheless that the services established be not imposed either on a person, or in favor of a person, but only on an estate and for the benefit of an estate, and provided moreover such services contain nothing contrary to public order.

The mode of using and extent of servitudes thus established, are governed by the document which constitutes them; in default of such document, by the rules hereafter given.

687. Servitudes are established either for the use of buildings, or for that of landed estates.

Those of the first species are called urbane, whether the buildings to which they are due are situated in a town or in a field;

Those of the second species are called rural.

688. Servitudes are either continual or interrupted.

Continual servitudes are those whose use is or may be continual without having a necessity for the positive act of man: such are water-pipes, house-eaves, windows, and other things of that description.

Interrupted servitudes are those which require the positive act of man for their exercise: such are rights of way, of drawing water, of pasture, and other similar ones.

689. Servitudes are apparent or non-apparent. Apparent servitudes are those which are manifested by external works, such as a gate, a window, or aqueduct. Non-apparent servitudes are those which have no external sign of their existence, as, for example, a prohibition to build upon a field, or against building beyond a determinate height.

SECTION II.

Of the Mode of establishing Servitudes.

690. Continual and apparent servitudes are acquired by deed, or by possession for thirty years.

691. Continual non-apparent servitudes, and interrupted servitudes whether apparent or not, can only be established by deeds.
Even immemorial possession does not suffice to establish them; without power nevertheless to impeach at the present time servitudes of this nature already acquired by possession in districts whore they may have been acquirable in this manner.

692. The appointment of the father of a family is equivalent to a deed as regards continual and apparent servitudes.

693. There is no appointment by the father of a family but when it is proved that the two farms actually divided have belonged to the same proprietor, and that it is by him that things have been put into the state whence results the servitude.

694. If the proprietor of two estates, between which there exists an apparent sign of servitude, disposes of one of these estates, without inserting in the contract any stipulation relative to the servitude, it continues to exist actively or passively in favor of the land alienated, or over the land alienated.

695. The deed constituting servitude, as far as respects those which cannot be acquired by prescription, can only be supplied by a document acknowledging the servitude, and emanating from the proprietor of the estate subject to servitude.

696. When a servitude is established, it is considered that every thing is granted which is necessary in order to make use of it.
Thus the servitude of drawing water at another's fountain necessarily imports a right of way.

SECTION III.

Of the Rights of the Proprietor of the Estate to which the Servitude is due.

697. He to whom a servitude is due has a right to form all the works necessary to make use of and preserve it.

698. These works are at his own expense, and not at that of the proprietor of the estate subjected to servitude, unless the deed establishing the servitude declare the contrary.

699. In the case even where the proprietor of an estate subjected to servitude is charged by the deed with the construction at his own expense of works necessary for the usage or preservation of the servitude, he may always get rid of such charge, by abandoning the estate subjected to servitude to the proprietor of that estate to which the servitude is due.

700. If the estate for the benefit of which the servitude has been established happens to be divided, the servitude remains due for each portion, provided always, nevertheless, that the burden of the estate subjected to servitude shall not be aggravated. Thus, for example, if the case be respecting a right of way, all the joint proprietors shall be obliged to exercise it by the same path.

701. The proprietor of an estate from which a servitude is due can do nothing which tends to diminish the usage thereof or to render it less commodious.
Thus he cannot change the condition of places, nor transport the exorcise of the servitude into a place different from that in which it has been originally assigned. Nevertheless, if this original assignment has become more burdensome to the

proprietor of the estate subjected to the servitude, or if he is prevented from making there advantageous repairs, he may offer to the proprietor of the other estate a place equally commodious for the exercise of his rights, and the latter shall not be at liberty to refuse.

702. On the other hand, he who claims the servitude, can only use it according to his title, without power to effect either in the estate which owes the servitude, in the estate to which it is due, any change which aggravates the condition of the former.

SECTION IV.

Of the Manner in which Servitudes are extinguished.

703. Servitudes cease when things are in such a state that it is impossible any longer to make use of them.

704. They revive if things are re-established in such a manner that they can be made use of; unless a sufficient space of time has already elapsed to raise a presumption that the servitude has been extinguished, as is described in article 707.

705. Every servitude is extinguished when the estate to which it is due, and that which owes it, are united in the same hands.

706. Servitude is extinguished by non-usage during thirty years.

707. The thirty years begin to run according to the different species of servitudes, either from the day on which they have ceased to be enjoyed, when the case regards interrupted servitudes, or from the day on which an act has been made contrary to the servitude, in the case of continual servitudes.

708. The mode of servitude is subject to prescription like the servitude itself and in the same manner.

709. If the estate in favor of which the servitude is established belong to several coparceners, the enjoyment by one precludes prescription with regard to all.

710. If among the joint-proprietors there be one against whom the prescription has not been able to run, as a minor, he shall have preserved the right for all the others.