

Indian Easements Act, 1882

Chapter 4 - The Disturbance of Easements

The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Illustration

A, as owner of a house has a right of way over B's land. C unlawfully enters on B's land and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

Section 33 - Suit for disturbance of easement

The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto:

Provided that the disturbance has actually caused substantial damage to the plaintiff.

Explanation I.--The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II.--Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit,

Explanation III.--Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds, a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

Section 34 - When cause of action arises for removal of support

The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

Section 35 - Injunction to restrain disturbance

Subject to the provisions of the Specific Relief Act, 1877 (10 of 1877)[1](#), sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement;--

(a) if the easement is actually disturbed -- When compensation for such disturbance might be recovered under this Chapter;

(b) if the disturbance is only threatened or intended --- when the act threatened or intended must necessarily, if performed, disturb the easement.

1. See now the Specific Relief Act, 1963 (47 of 1963).

Section 36 - Abatement of obstruction of easement

Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.
