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## PROPERTY—EASEMENTS IN GROSS AND EASEMENTS APPURTENANT

Complainant owned thirty acres which was being developed for residences. At that part of the property fronting on the highway, complainant erected a sign made of two upright posts and three horizontal boards. The top board was inscribed, "Woodland Acres", next board, "E. J. Dent, Jr. Developer," and the last one, "New Homes". Complainant sold this lot with residence thereon to defendants and inserted in the deed: "Reserving unto the parties of the first part the right to maintain its subdivision sign in its present location, with the right of ingress and egress, thereto for the purpose of maintainance and repairs." Defendants later removed the two lower boards and refused to permit complainant to replace them, whereupon complainant sought injunctive relief. The trial court granted relief because the Chancellor was of the opinion that the clause quoted constituted a covenant running with the land, and there was no ambiguity in the clause. On appeal, *held,* reversed and remanded. The clause constituted an easement in gross, but parol evidence was admissible to show that the easement was to last a certain period. If there was not an agreed period, then the easement would terminate when the purpose (which was sale of all the lots) was accomplished. *Reed v. Dent,* 194 Va. 156, 72 S.E.2d 255 (1952).

Defendant conveyed the mineral rights of certain land to Ritter Company by the usual type deed, which also provided: "All the rights, rights of way, privileges and easements herein mentioned shall forever run with and be appurtenant to any and all the coal and other substances above numerated, in, on or under the tract of land herein described, and in, on and under any other lands now owned or hereafter acquired by the party of the second part, its successors or assigns". Ritter Company also acquired coal rights in other lands in this general area. Stokes Company which already owned coal rights in other tracts including the Slocum and Kroll tracts leased eleven tracts from Ritter, and although the Matney tract was not included in the eleven, Riter purportedly gave Stokes the right to move any coal mined in any tract across the Matney property. Stokes attempted by mandatory injunction to haul coal over defendant's land. The trial court refused to grant the injunction. On appeal, *held,* affirmed. Since the Slocum and Kroll tracts had never been owned by Ritter, the easement was not for

the benefit of those tracts, and an appurtenant easement cannot be converted into an easement in gross. *William S. Stokes, Jr., Inc.* v. *Matney* 194 Va. 339, 73 S.E.2d 269 (1952).

There has been much conflict on the status of easements in gross and appurtenant easements in regard to the uses made of the property to which they pertain. The courts have been reluctant to allow easements in gross if there is a chance that the easement may be appurtenant. The court claimed the easement allowed in the *Reed* case was in gross as it was "a mere personal interest in, or right to use, the land of another."[1] It would seem that the court was justified in so holding unless it could be argued that the easement benefitted the rest of the thirty acre tract to which it was adjacent, and belonged with the remaining tract of land. "A way is never presumed to be in gross when it can be construed to be appurtenant, and the parties are presumed to contract in reference to the condition of property at the time of the sale."[2] This was not discussed in the case though there is authority to the effect that an easement may be appurtenant to land even though the servient tenement is not adjacent to the dominant.[3] It would seem, however, that the better view is that this was an easement in gross and the parties intended it to be a personal right to help the plaintiffs in the advertising of the subdivision.

If the defendants introduce oral evidence insufficient to establish that there was an agreement when the deed was executed which permitted removal of the signs at the expiration of eighteen months from the date of the deed, the court must decide the time limit to place on this easement, as no particular time was set forth in the reservation in the deed itself.[4] Because of the ambiguity of the written instrument the court allowed parol evidence and extraneous facts to show the intention of the parties.

It could reasonably be concluded that the sole purpose of the sign was to advertise the land and therefore the sign should be left unimpaired until this purpose was completed. There is a well established rule that an easement may be terminated by the completion of the purpose for which it was granted inasmuch as the reason for, and necessity of, the servitude are at an end. Thus, if an ease-

1. Reed v. Dent 194 Va. 156, 162, 72 S.E.2d 255, 258 (1952).
2. French v. Williams, 82 Va. 462, 4 S.E. 591 (1887).
3. 3 Tiffany, Real Property § 762 (3rd ed. 1939).
4. *Id.* at § 817.

ment is granted for a particular purpose only, the right continues while the dominant tenement is used for that purpose, but ceases when the specified use ceases.[5] This impliedly refers to easements appurtenant but is equally reasonable to determine the duration of easements in gross. Under such circumstances the court would be justified in issuing an injunction to last as long as the complainants had good cause to advertise the lots of the subdivision for sale and development. As an easement in gross is a personal interest, it would not be transferable to a subsequent real estate dealer who might purchase the entire tract.

The case of *Stoke's* v. *Matney* illustrates the attempt to extend an appurtenant easement beyond the servient estate. The easement originally granted to Ritter was appurtenant to that tract of land owned by Ritter. The weight of authority supports the rule that an easement may be appurtenant to land even though the servient tenement is not adjacent to the dominant.[6] This would not apply to the *Stokes* case, however, as the Slocum and Kroll tracts cannot be called dominant estates.

An easement appurtenant to land cannot be converted into an easement in gross. To hold contra to this would subject the servient tenement to numerous burdens which clearly was not the intention of the parties. "Owner of an appurtenant easement cannot separate it from the dominant estate by grant so as to convert it into an easement in gross. He cannot enlarge the right or retain any interest therein separate and distinct from the land to which it belongs. The owner of the dominant tenement cannot subdivide the easement by granting rights in it to one who has no title or interest in that estate. For example, the owner of a way cannot authorize a stranger to use it when he is not coming to or from the dominant tenement."[7] *A fortiori* the grantee of an easement could not authorize a stranger to use it when he is not coming to or from the dominant tenement.

A landowner who has the right to use a private way going to and from certain land cannot go out of the limits of the way nor use it as an easement for the benefit of any other tract of land than that for which it was originally established.[8]

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5. Hahn v. Baker Lodge, 21 Or. 30, 27 P. 166, 13 L.R.A. 158 (1891).
6. Jones v. Stevens, 276 Mass. 318, 177 N.E. 91 (1931).
7. Wood v. Woodley, 160 N.C. 17, 75 S.E. 719 (1912).
8. Clark v. Reynolds, 125 Va. 626, 100 S.E. 468 (1919).

An easement appurtenant is a burden upon the servient estate. The owner of the dominant estate cannot by any act of his own, independent of the consent of the owner of the servient estate, use the easement or authorize it to be used for the benefit of any lands other than those to which it adheres, or without such consent broaden the use beyond its creation.[9] Otherwise the burden upon the servient estate would thereby be increased without the consent of the owner thereof. Such an easement cannot be severed from the estate to which it is attached and made the subject of an independent conveyance; nor can an easement appurtenant by any act of the owner of the dominant estate be changed into an easement in gross.[10] "The way is granted for the benefit of the particular land, and its use is limited to the use in connection with the enjoyment of such land. Such a way cannot be converted into a public way without the consent of the grantors and the grantors have the right to rely on its use being limited to the purpose for which it is granted—or in other words, its legal use,—and can prevent the use of the way for purposes not authorized."[11]

One who, in connection with a grant of a parcel of land, receives a grant of an easement to himself, heirs, and assigns of a grant of way across remaining property of the grantor to the highway, cannot grant rights in the easement to a stranger having no interest in the land granted, since it is solely appurtenant to the tract conveyed.[12]

"Even rarer than cases of changing easements in gross to easements appurtenant are cases in which the intention appears to permit what was created as an easement appurtenant to be changed into an easement in gross. Hence it will be assumed, in the absence of an affirmative showing to the contrary, that an appurtenant easement cannot be divorced from the dominant tenement in such a way as to permit it to become an easement in gross or become appurtenant to another tenement."[13]

It is submitted that the foregoing statements are all in accord with the decision of the court in the *Stokes* case. However an interesting possibility exists in regard to the wording of the easement.

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9. 3 Tiffany, Real Property § 761, p. 213.
10. Kizmiller v. Baltimore & O. S. W. Ry. Co., 60 Ind. App. 686, 111 N.E. 401 (1891).
11. Hoosier Stone Co. v. Malott, 129 Ind. 593, 29 N.E. 412, 414 (1891).
12. Wood v. Woodley, 160 N.C. 17, 75 S.E. 719 (1912).
13. 2 American Law of Property § 8. 73, p. 285 (1952).

The deed to Ritter stated that the easement is "appurtenant to any and all the coal . . . . in, on or under the tract of land herein described, and in, on and under any other lands now owned *or hereafter acquired by the party of the second part (Ritter), its successors or assigns.*" [*Italics* added] It has been held that where an easement has been granted or reserved by deed, the ordinary rule which governs in the construction of other writings prevails, namely that the rights of the parties must be ascertained from the words of the deed and the extent of the easement cannot be determined from any other source.[14] Thus it would appear that if Stokes were to convey the Slocum and Kroll tracts to Ritter and have Ritter reconvey the tracts, this would satisfy the language of the deed and Stokes would have a valid easement appurtenant to those lands.

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14. Stephen Putney Shoe Co. v. Richmond, F.&P. Ry. Co., 116 Va. 211, 81 S.E. 93 (1914).