ADVERSE POSSESSION

In order to determine what adverse possession of land is, one must first consider what amounts to possession of land.

The following definition of possession was given by MacQuarrie, J. in *Esbeidy* v. *Phalen* (1958), 11 D.L.R. (2d) 660 at page 665:

> "Possession may be roughly defined as the actual exercise of rights incidental to ownership as such, that is, the person who claims to be in possession must exercise these rights with the intention of possessing. Where a man acts toward land as an owner would act, he possesses it. The visible signs of possession must vary with the different circumstances and physical conditions of property possessed."

In order to prove that the true owner is in possession, it is not necessary to show that he acts, and has been acting this way with respect to the land he owns, since the law presumes that the true owner is in possession: *Cunard* v. *Irvine* (1853-55) 2 N.S.R. 31; *Legge* v. *Scott Paper Company* (1972), 3 N.S.R.(2B) 206 at page 221.

Any person who has been in possession of land is entitled to maintain ejectment to recover possession of the land if he is put out of possession. If the true owner brings the action, all he need prove is that he is the true or "proper" owner, for example, that he is the original Crown grantee or is a successor in title to the original Crown grantee. Any other person must, in order to maintain the action, prove that he is in actual possession of the land or that he can trace his title from a person who was in possession and that he has been dispossessed by the defendant: *Cunard* v. *Irvine, Supra.*

At common law, therefore, the person in possession of land, even if he is not the true owner, is given fairly substantial protection and recognition: he has the right to recover possession of the land from any person except the true owner, or some person with a better title: *Allen* v. *Rivington* 86 E.R. 813.

Nevertheless, at common law, it was possible for the true owner to neglect land completely for any length of time without he or his successors in title losing the right to eject, at any time, the person in actual possession. Thus, a person who had been in actual physical possession of land over a long period of time could be suddenly ejected from the land by a careless long lost owner.

The legislation which was designed to correct this injustice imposes a limitation period during which an action to recover land must be brought. In Nova Scotia, this limitation period is imposed by Section 9 of the *Limitations of Actions Act* which provides as follows:

> "No person shall make any entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action first accrued to the person making or bringing the same."

The policy underlying this legislation was explained this way by Haliburton, C. J. in *Cunard* v. *Irvine, supra*, (at page 35);

> "If parties resident in the province will lie by, and carelessly permit their property to be thus adversely possessed by others, they are the very people against whom this statute was intended to operate. The law contemplates that owners even of wild or vacant lands should make enquiry after their property."

Although, the legislation, in form, imposes a limitation period, it creates, in effect a defense to an action for ejectment.

It will be noted that the twenty years begin to run after the right of the true owner, or the "paper owner" to bring the action first accrued. The first question, which must be answered, therefore, in applying this Section is when did the cause of action first accrue?. Clause (a) of Section 10 of the Act answers this question. This provision is interpretative in effect defining, as it does, when the right of action of the paper owner first accrues:

> "Where the person claiming such land or rent, or some person through whom he claims, has, in respect to the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession, or discontinuance of dispossession, or at the last time at which any such profits or rents were or was so received.

An adverse claimant, therefore, must first show that the paper owner was in possession and has been dispossessed. It is important to remember that the paper owner is deemed to be in possession. Therefore, it cannot be said that the time begins to run when the paper owner ceases to have actual physical possession of the land. For example, if a paper owner lives on land and then moves away from it leaving it vacant, he has not been dispossessed and has not discontinued possession within the meaning of the Act. The time only begins to run when possession by another person, adverse to the paper owner's constructive possession, begins. This is clear from the following passage from Baron Park's judgement in *Smith* v. *Lloyd* 9 Ex 562:

> "There must be both absence of possession by the person who has the right and actual possession by another, whether

adverse or not, to be protected, to bring the case within the statute.

> This authority does not controvert what I have just propounded, for in order that the statute may operate against the owner out of possession, actual possession in fact in another is essential, in order that the rule of law which attributes a possession actually vacant to the person who has the legal title may be rendered inapplicable".

It will be remembered that Section 9 of the Act provides a twenty year limitation period during which the paper owner may bring an action to recover land. However, Sections 18, 19 and 20 provide a longer limitation period where the paper owner is a person under a disability or is the Crown.

Section 18 provides that a person is under a disability if he is an infant, idiot, lunatic, unsound of mind or absent from the Province and goes on to provide that any person under a disability may bring an action to recover land within ten years after he ceased to be under the disability or ten years after the person to whom the right first accrued died, whichever first happens. This Section also deals with the rights of a paper owner who claims through the person under a disability who died without ceasing to be under the disability by providing that the paper owner must bring the action within ten years after the death of the person who dies under the disability.

The following are examples of how this Section works:

> (A) Paper owner moves off land in 1940. In 1941 trespasser begins to use land as his own without permission of paper owner. Paper owner moves to New Brunswick and continues to live there. Trespasser continues in possession continuously. In 1962 paper owner returns to Nova Scotia and brings an action to eject trespasser from land. Since paper owner was under a disability, that is, outside Nova Scotia, trespasser has no defense to the action and may be ejected from land since paper owner had ten years from the time he ceased to be under the disability, by returning to Nova Scotia. The Act does not bar his action until 1972, that is, ten years after he ceased to be

under the disability by returning to Nova Scotia. However, if the paper owner was away from the land but stayed in Nova Scotia, then he would be subject to the twenty year limintation period and his cause of action would be barred, because the time would have started to run when he was dispossessed in 1940.

(B) In the above example, paper owner does not return to Nova Scotia and dies in New Brunswick in 1960 leaving the land to his son. The paper owner's son may, by virtue of Section 18, bring an action as a person claiming through the paper owner within ten years after his father's death, or until 1970. Again, if his father had died in Nova Scotia, his cause of action would have been barred in 1962.

It is immediately apparent that if the extensions to the limitation period stopped at this point, there would be great uncertainty as it would, in most cases, be impossible to determine whether the true owner, who probably cannot be found, was under a disability or not, and if so, when he ceased to be under a disability, or, whether the person through whom the paper owner claims was under a disability. This uncertainty would create difficulties in cases where a declaration of title is sought, particularly in actions brought under the *Quieting Titles Act*. In these actions, it is essential to establish definitively that the limitation period has, in fact, run. Section 19 removes this uncertainty by providing that an action to recover land must be brought within forty years after the cause of action accrued, notwithstanding that the paper owner or the person through whom he claims is or has been under a disability.

There is a further extension to the limitation period where the Crown is the paper owner: Section 20 provides that the period during which the Crown may bring an action to recover land is sixty years after the cause of action first accrued.

In almost all cases, therefore, a trespasser who, for sixty years, continues in possession of land which is adverse to the title of the paper owner has a complete answer to an action for ejectment brought by the paper owner.

This is not, however, the end of the matter and there are certain cases where the *Limitations of Action Act* does not apply at all and where the paper owner may maintain an action for ejectment at any time. These cases are as follows:

> (A) Nobody can obtain any interest in a street or public highway by possession and public highways or streets always remain as such notwithstanding posession: *Public Highways Act*, Section 16; *Halifax City Charter*, Section 592; *Dartmouth City Charter*, Section 342.
>
> (B) Section 342 of the *Dartmouth City Charter* and Section 592 of the *Halifax City Charter* remove the operation of the Statute of Limitations not only with respect to streets but with respect to any land owned by either City. The language of both these Sections is identical:
>
> > "No person shall, by reason of the adverse or unauthorized possession, occupation, enjoyment or use of any land owned by the city or of any street within the city and shown upon any plan of subdivision or dedicated for use as a street whether adopted by the city as a street or not, obtain any estate or interest therein or in any such land by reason of such adverse possession, occupation, enjoyment or use thereof, and that it shall be deemed that no such right has heretofore been so acquired."

It appears, therefore, that the Citys of Halifax and Dartmouth are immune to the limitation periods imposed by the Statute, but that the Crown is subject to the sixty year limitation period imposed by Section 20.

It must also be remembered that the *Limitation of Actions Act* is a provincial statute and that it may very well be that it does not apply in cases where the federal Crown is the paper owner.

Subject to these exceptions, however, once the applicable limitation period has expired the right of the paper owner to bring an action to recover land is extinguished. This is expressly provided by Section 21 of the Act.

In order to defeat the title of the paper owner, therefore, the first thing which must be established is when did the time begin to run, or at what time was the paper owner dispossessed. It will be recalled that this time starts to run when the adverse claimant commences possession of the land. The burden of proving when the time begins to run is on the adverse claimant and if, at the close of the case, there is doubt as to when the time began to run then his claim fails and the claim of the paper owner is untouched: *Giffin* v. *Poirier* 42 N.S.R. (2d) 161.

What type of possession is necessary to extinguish the paper owner's right of action?

It will be remembered that possession has been defined, in effect, as acting toward land as the true owner would. However, the possession required before the Statute of Limitations can apply must have other characteristics as well. The following definition of the type of possession required appears in **Anger and Honsberger, Canadian Law of Real Property** at page 789:

> "The possession that is necessary to extinguish the title of the true owner must be actual, constant, open, visible and continuous possession known or which might have been known to the owner, by some person or persons not necessarily in privity with one another to the exclusion of the owner for the full statutory period, and not merely a possession which is equivocal, occasional or for a special or temporary purpose."

This definition was adopted by the Nova Scotia Supreme Court in *Taylor* v. *Williganr and Skidmore* (1979), 32 N.S.R. (2d) 11 at page 17.

The first characteristic to examine, therefore, is the "actual, open and visable" or, "notorious" characteristic. In order for possesssion to be "actual, open and visable" or "notorious", the possession must be of such a nature that the true owner either knows, or ought to know that his rights are being invaded intentionally: *Sherrin* v. *Pearson* (1887), 14 S.C.R. 581 at page 588.

Accordingly, the adverse claimant must show that his acts of possession are well known in the community. It is conceivable that he could act towards a piece of land as a true owner would but yet those acts would not be so obvious as to put a reasonably prudent true owner or paper owner on inquiry.

Secondly, the possession must be continuous for the full period prescribed by the statute. This is so because the owner, is, by his title, deemed to be in possession, or constructively in possession: *Graham* v. *Fulmore* (1942), 16 M.P.R. 297. Accordingly, once the adverse claimant ceases to be in possession before the limitation period ends, the true owner is again deemed to be in possession even if he does not make a physical entry. In such a case, the time stops running and does not begin to run again until the paper owner is again dispossessed.

Thirdly, the possession must be exclusive not only to the true owner but to all other persons. In *O'Neil* v. *MacAulay* (1977), 21 N.S.R. (2d) 210 it was held that since persons not claiming through the adverse claimant, were, together with the adverse claimant, in possession, the possession of the adverse claimant was not exclusive and therefore the Statute of Limitations did not apply.

However, the controlling factor is that the possession must be adverse, that is, it must be inconsistent with the title of the true owner. A person may be treating

land as his own in a very open way, to the exclusion of other persons, but may be doing so with the permission of the true owner. The best example of this is a tenant in possession under a lease. In such a case, possession of the tenant is not adverse and the time does not begin to run unless and until it becomes adverse to the possession of the true owner.

Another example is where the adverse claimant, at some time during the limitation period, becomes the true owner. Jones, J. (as he then was) had this question before him in *O'Toole* v. *Walters* (1979), 7 R.P.R. 213. There, the claimant commenced possession of the property adverse to the true owner in 1953. In 1961, the true owner conveyed the land to the claimant. The claimant did not record his deed. In 1969, however, the true owner conveyed the same property to a third party and the third party recorded his deed without notice of the claimant's deed. Jones, J. held that the claimant's possession, although continuous, ceased to be adverse to the true owner before 1961, when he acquired title, then became adverse to the true owner's title in 1969, since the claimant's unrecorded deed became ineffective as against the third party's deed by virtue of Section 17 of the *Registry Act*. He concluded that the limitation period stopped running in 1961 and did not start to run again until 1969 when the claimant's possession again became adverse to the superior title of the third party who then became the true owner.

The result of these authorities is that the burden is on the adverse claimant to show that for the full applicable statutory period, he alone treated the land as his own, without the true owner's permission and inconsistent with the true owner's title, and that his actions were of such an obvious nature that the true owner knew or ought to have known that the adverse claimant was acting towards the land in such a way.

It is apparent that whether possession is notorious, open, adverse and continuous is not a question of fact but a question of law. Thus, evidence by affidavit or otherwise to establish this type of possession must set out the facts which gives rise to this legal conclusion, such as fencing, payment of taxes or erecting "no trespassing" signs. It is improper for a witness to simply say, by affidavit or otherwise, that a person has been in notorious, open , adverse and continuous possession of land. This is a question for the court.

How much land may an adverse claimant claim if he has discharged this burden?

If he makes his entry on the land without colour of right, that is, without believing in good faith that the entry is made pursuant to a valid claim, then the title of the true owner is extinguished only with respect to the land the adverse claimant actually possesses.

However, if the adverse claimant enters on land honestly believing that he has good title to all of it but possesses only part of it, he is deemed to be in possession of all of it. This doctrine, known as the doctrine of "constructive possession", applies even if the adverse claimant does not have any valid claim to the land. However, if the doctrine is to apply, the adverse claimant must prove that he honestly believed that he had a valid title to the entire parcel. If, therefore, he enters on a parcel of land described in an invalid deed which, in effect, conveys nothing, and physically possesses only part of the land, he is deemed to be in possession of the entire parcel described in the deed. This doctrine is now settled law, having been adopted by the Supreme Court of Canada in *Wood* v. *Leblanc* (1904), 34 S.C.R. 635.

Although the possession required by the statute must be continuous, it need not be by one person. It can be by a series of trespassers extending through the limitation period. For example, if *A* is the true owner, but *B*, *C* and *D* each exercise adverse possession over *A*'s land in succession to one another, and *D* is in possession when the limitation period expires, *D* is entitled to the protection of the Statute of Limitations. This is clear from the following remarks made by Strong, C. J. during the course of giving judgment in *Handley* v. *Archibald* (1899), 30 S.C.R. 130 at page 137:

> ". . . if there has been a series of persons in possession for the statutory term between some of whom and their predeceasors there has been no privity, in such case the bar of the statute is complete, but if there has been any interval between the possession of such persons then in as much as during the interval the law refers the possession to the real owner having title, the benefit of a form of possession of precedent wrong doer is lost to the trespasser who subsequently enters, in whose favour the statute consequently runs only from the date of his known entry".

It must be noted, however, that the series of trespassers must meet the "continuous" test. If there is any interval during which the true owner resumes constructive possession in the absence of the actual possession of a trespasser, the time stops running.

It also appears that a person who has been in possession for a period which is shorter than the limitation period may transmit by deed or will whatever "credits" he has built up. Accordingly the person who succeeds to him has an interest in the property which can ripen into title at the end of limitation period but which, of course, is subject to be defeated if the true owner re-enters before the end of the limitation period: *McDonald* v. *Rudderham* (1921), 54 N.S.R. 258.

How have the courts applied these principles? In *Elliot* v. *Jardine* (1960), 45 M.P.R. 114, Ilsley C. J. pointed out, in the course of giving his judgment (at page 111), that actual possession is a question of fact: it consists of two elements, the intention to possess the land, and the exercise of control over the land to the exclusion of others, but the possession must be of that character of which the land is capable.

The following cases illustrate some methods the courts have used in applying these principles:

(A) *Taylor* v. *Milligan and Skidmore* (1979), 32 N.S.R. (2d) 11. There the argument was raised that since summer cottages in a remote area were not used during the winter, the possession of the owners of the cottages was not continuous. However Cooper J. A., during the course of giving the reasons of the Appeal Division of the Nova Scotia Supreme Court said, at page 20:

> "Indeed I cannot subscribe to the view that in this province, where summer cottages abound, possession of them is lost when the snow and ice of winter preclude their use in any practicable sense. The nature of the possession required under the statute to extinguish the title of the true owner must necessarily vary with the circumstances".

(B) In *Scott* v. *Smith* (1980), 35 N.S.R. (2d) 10 Hallett, J. had to decide whether the marking of a wood lot by blazed lines and cutting firewood amounted to adverse possession of wild land. In concluding that it did he said this, at page 53:

> "With respect to title by possession to wild or uncultivated land, it can be shown otherwise than by actual enclosure. The evidence indicates that the woodlot was not enclosed but that it was marked by clearly defined blaze

> lines for approximately 50 years and has been used by the Wambacks to obtain firewood and wood for sale over this period of time, other than within the last four or five years. The test with respect to obtaining title by possession of lands unsuitable for cultivation is that the persons claiming the land must do such acts as would naturally be done by the true owner if he were in possession. I cannot think of any other logical use over the period in question of the woodlot than to cut firewood and to this end the Wambacks maintained their lines and cut on their own property as testified to by the various witnesses. although since Harry Wamback became sick approximatley four years ago there has been little cutting done on the property, but there is not evidence that any other person has gone into possession. In Nova Scotia, traditionally boundary lines for woodlots are marked by blazed lines; they are not necessarily fenced. There has been no one in adverse possession to the Wambacks. The woodlot is within the bounds of the deed to the Wamback lands."

(C) *Kirby* v. *Cowderoy* [1912] A.C. 599 was an extreme case. There the Judicial Committee of the Privy Council held that payment of taxes on a very large tract of wild uncultivated land in British Columbia was enough to satisfy the statute, notwithstanding that the claimant had no physical contact with the land at all.

The result of these authorities, it is submitted, is that although the degree of control over a parcel of land of one type, such as wild land in a remote area, may be sufficient to satisfy the statute, it may not satisfy the statute with respect to land of another type, such as land in an urban area.

What kind of title does a successful adverse claimant get?"

There is not a word in the *Limitation of Actions Act* which vests title in the successful adverse claimant. The Act merely provides that an action to recover land shall not be brought after the end of the prescribed limitation period and

extinguishes the claim of the true owner after the requirements of the Act have been met. However the courts have treated the successful claimant as being the true owner for almost all practical purposes. This was pointed out by Goodridge, J. of the Supreme Court of Newfoundland, Trial Division, in *Strickland* v. *Murray* (1979), 6 R.P.R. 39 when he said at page 46:

> "It seems unnecessary to be overly cautious on the terminology used in this connection. There can be no doubt that possessory titles are routinely accepted in this province and that there is attributed to such titles status of ownership."

Possessory title does not, however, carry with it all the rights incidental to ownership acquired by express grant, such as the benefit of covenants running with the land: *House* v. *Glovertown* (1977) N.F.L. and P.E.I. R. 416; or implied easements such as easements of necessity: *McLaren* v. *Strachen* (1891), 23 O.R. 120.

However, in *Strickland* v. *Murray*, *supra*, Goodridge, J. held that the presumption of possession by the owner, whether in actual possession or not, applies to possessory title. Accordingly, a successful adverse claimant may discontinue actual physical possession after the statutory period runs, and still retain ownership unless another person commences and continues possession adverse to his title in an exclusive, open and notorious way during the statutory period.. The successful adverse owner may, therefore, maintain an action for recovery of land against the former true owner: *Shea* v. *Burchell* (1894), 27 N.S.R. 235. Indeed, it has been the practice in Nova Scotia for courts to order that a certificate of title be issued to a claimant, pursuant to the *Quieting Titles Act*, when the claimant has established possessory title.

It will be recalled that before the Statute of Limitations applies, the possession must be adverse, or inconsistent with the title of the true owner.

It appears that a trespasser in possession, therefore, can claim the benefit of the statute even if he is aware of the fact that somebody other than himself has a valid claim to the land.. He cannot, of course, claim under colour of title, but otherwise can establish possessory title to the parcel of land which he actually occupies.

However, Section 16 of the *Limitations of Action Act* provides, in effect, that if the person in possession gives to the true owner, or his agent, an acknowledgement, in writing, of the title of the true owner, the limitation period stops running and does not begin to run again until after the acknowledgement has been given. Before this Section can apply, the acknowledgement must be in writing and must be signed by the party in possession and must be given to the true owner, or his agent: *McGibbon* v. *McGibbon* (1913), 46 N.S.R. 552; *Eastern Trust Company* v. *McAleer* (1931), 2 M.P.R. 93.

It should be noted that Sections 14 and 15 provide that if one tenant in common, or joint tenant, or one heir, is in possession of land he may acquire possessory title against the other owners, since these Sections provide that possession by one such owner shall not be deemed to be possession by the others.

In closing, I should point out the special limitation periods which apply to a tenant who remains in possession after his lease expires.

Clause (f) of Section 10 of the Act provides, in effect, a limitation period during which an owner may eject a tenant at will. It begins to run either at the deter-

mination of the tenancy at will, or if the tenancy at will was never terminated, at the end of one year after the commencement of the tenancy.

Clause (g) of Sectoin 10 provides that if a tenant for a term which is not created by a written lease overholds, the limitation period begins to run against the landlord at the termination of the period of the tenancy or at the last time when any rent payable in respect of the tenancy was received, whichever last happened.

(e) *Prescription*

An easement can also be created by prescription, that is, by continuous use over a long period of time. Although the practical result of this doctrine is the same as the doctrine of adverse possession, whereby title to land is, in effect, acquired by long use, the theory underlying acquisition of easements by prescription is very different than the theory underlying acquisition of title by adverse possession.

When one claims title by adverse possession, one relys totally on the *Limitation of Actions Act* which terminates the right of the true owner to recover property after having been dispossessed for those periods of time mentioned in the *Limitation of Actions Act*. The doctrine of adverse possession is, consequently, a negative doctrine,

because under that doctrine, the true owner's rights are extinquished pursuant to statute.

The doctrine of acquisition of easements by prescription is, however, positive although it was born and developed out of a fiction created by the courts.

First let us consider prescription at common law. In England, the courts held that if an easement has been enjoyed since the beginning of legal memory, that is since the year 1189 (which year was set by statute), then it is presumed that the person enjoying the easement acquired the easement by grant prior to 1189 even though he cannot produce the grant and, in all likelihood, there never was one.

Because of the extreme difficulty of showing continuous use since 1189, the courts then developed a more relaxed doctrine called the "presumption of modern grant": if the use continues over a long period of time (normally 20 years) then the court presumes that a grant of easement had been made since 1189 but before the use commenced.

The problem with this doctrine is that if it can be shown that the person enjoying the easement had not always enjoyed it, then the presumption of grant is rebutted. For example, an interruption of use would rebut this presumption.

As a result of the inadequacy of these judicial fictions, the British Parliament enacted the *Prescription Act* which provides that if a person can show that he actually enjoyed an easement without interruption for the full period of twenty years, that right may not be defeated or destroyed by showing only that the way or other matter was first enjoyed at any time prior to the period of twenty years. This

Act also goes on to provide that if the enjoyment continues for the full period of forty years, the right is deemed absolute and indefeasible unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. This provision is now the law of Nova Scotia appearing, as it does, in the Nova Scotia *Statute of Limitations* as Section 31.

It is apparent, therefore, that although the theory and development of the doctrines of adverse possession and prescription are different, the burden on the claimant is, for all practical purposes, the same in each case.

In discussing acquisition of easements by prescription, I should point out that subsection 32(2) of the *Limitation of Actions Act* takes away the right to acquire by prescription the right to light or air to or for any building situate in any city or in any incorporated town in Nova Scotia. However, this subsection does not apply to any right which has been acquired by prescription before April 15, 1931.

What type of use, therefore, is necessary in order to acquire an easement by prescription? If at the end of the day, the court concludes that the owner of property has acquiesced in the use, then the court will declare that an easement has been created by prescription. In *Dalton* v. *Henry Angus & Co.; Com'rs of Her Majesty's Works and Public Buildings* v. *Henry Angus & Co.*, (1881), 6 App. Cas 740, H.L., Fry, J. said (at pp. 773-774):

> "... in my opinion, the whole law of prescription and the whole law which governs the presumption or inference of a grant or covenant rest upon acquiescence. The Courts and the Judges have had recourse to various expedients for quieting the possession of persons in the exercise of rights which have not been resisted by the persons against whom they are exercised, but in all cases it appears to me that acquiescence and nothing else is the principle upon which these expedients

> test. It becomes then of the highest importance to consider of what ingredients acquiescence consists... I cannot imagine any case of acquiescence in which there is not shewn to be in the servient owner: 1, a knowledge of the acts done; 2, a power in him to stop the acts or to sue in respect of them; and 3, an abstinence on his part from the exercise of such power."

Accordingly, physical evidence of an easement which shows up on a survey should be of concern to the solicitor for a purchaser, notwithstanding the absence of an express grant of easement.

For a detailed discussion of the development of the doctrine of prescription as it relates to easements see Megarry & Wade - *The Law of Real Property* (Fourth Edition), pp. 846 ff; and Anger and Honsberger - *Real Property* (Second Edition), pp. 930 ff.