

In this country, as well as in England, the trend of public opinion is in the same direction, as is proved by the increasing number of cases in which the decision of a judge in questions of fact is preferred to that of a jury and by the tendency in all matters of procedure to adopt the same principle.

TRESPASS BY AEROPLANE.

The art of flight has progressed so rapidly, and cross-country flights are of such frequent occurrence, that the question of trespass by flying over a person's land merges from an abstract subject for discussion into a matter of the greatest practical importance. The following observations discuss (1) the proposition that it is an act of trespass merely to fly over a person's land, and (2) the right of a landowner forcibly to eject a trespassing aviator.

(1) To constitute trespass, which may be defined as the wrongful entry upon or the interference with the possession of the land of another person, proof of entry either actual or constructive is necessary. Constructive entry includes every interference or entry other than actual or physical entry, and it is submitted that, on the existing authorities, the flight by an aviator over the land of another without alighting is a constructive entry, and constitutes an act of trespass.

Cujus est solum ejus est usque ad cælum. He who possesses land possesses also that which is above it, but whether the owner of land can maintain an action for trespass against a man who uses the air above his land by flying in an air-machine has been doubted by Lord Ellenborough, but affirmed by Lord Blackburn. In *Pickering v. Rudd*, [1815] 4 Camp. 219, where the defendant nailed to his own wall a board so as to overhang the plaintiff's close, it was held by Lord Ellenborough that an action for trespass would not lie against a man for interfering with the column of air superincumbent on a close, but that the proper remedy for any damage arising from the board overhang-