

having regard to the purposes of the highway, which is for passage and for all that that implies, but for no other purpose.

Apart altogether from statute, therefore, it would appear reasonably clear that the law is not inadequate to insure the proper user of the air for navigation of aircraft, or to protect the right of the surface proprietor to the peaceable enjoyment of the surface, including of course in the expression "surface" such an area immediately above the ground as can reasonably be made use of by men supported directly or indirectly upon it. There is no difficulty in insisting that, apart from statute, a landowner could prevent by injunction, or recover damages for, the unreasonably low flight of an aircraft or its hovering unreasonably above his land.

The point just discussed has not, in England, been left to forensic discussion and determination. The Air Navigation Act, 1920, contains a very long section (5) providing, to begin with, that no action shall lie in respect of the flight on an aircraft at a reasonable height above the ground, having regard to all the circumstances of the case. But it also deals with another aspect of the subject. No aircraft can take the air or leave it without making use of land or water surface, and the force of gravity may on occasion result in interference from the air with the rights to the surface. Such interference may be due to stress of weather, to accident resulting in the fall of an aircraft, or to the dropping of some heavy object by accident or design. The English Act provides that "where material damage or loss is caused by an aircraft in flight, taking off, or landing, or by any person in such aircraft, or by any article falling from such aircraft, to any person or property on land or water, damages may be recovered from the owner of the aircraft" (or in certain circumstances, from the lessee of the aircraft)—"without proof of negligence" unless there has been contributory

(1) *Original Hartlepool Colliery Co. v. Gibb* (1877), 5 Ch. D. 713.

(2) *Dovaston v. Payne* (1795), 2 H. Bl. 527.

(3) *Harrison v. Duke of Rutland* (1893), 1 Q.B. 142.

(4) *Hickman v. Maisey* (1900), 1 Q.B. 752.

(5) 10-11 Geo. 5 c. 80, s. 9.