

proceeds to liken the earth's surface to the suburbs of Heaven—a simile with which perhaps everyone would not be agreed, although it might be recommended to the attention of some of our politicians. After pointing out that the earth serves man with all his worldly necessities, not only with his food and substance, but with the precious and other metals, and many other things of profit, ornament, and pleasure, he concludes: "And lastly, the earth hath in law a great extent upwards, not only in water, but of air, and all other things even up to Heaven." Whatever may be said of Coke's "crabbed pedantry," it must be admitted that his Lordship, in his treatment of this subject, goes to the very root and basis of the conception. It is the invasion of man's rights of ownership in the earth that the law protects. Land is the subject-matter of the ownership. The air is a mere adjunct.

Trespass is the wrongful physical interference with the subject-matter of another's ownership. Does air above a man's land so partake of the nature of substance that a person traversing it commits a trespass? The answer is clearly in the negative. "I do not think," said Lord Ellenborough in *Pickering v. Rudd* (1815), 4 Camp. 219, "it is trespass to interfere with the column of air superincumbent on the close. . . . I am by no means prepared to say that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*." That was a case where the defendant had nailed to his own wall a board overhanging the plaintiff's close. Referring to the board in question his Lordship said: "If this board overhanging the plaintiff's garden be a trespass, it would follow that an aeronaut is liable to an action of trespass *quare clausum fregit* at the suit of the occupier of every field over which his balloon passes in the course of his voyage. If any damage arises from the object which overhangs the close, the remedy is by an action on the case."

In the case of *Kenyon v. Hart* (1865), 6 B. & S. 249, Lord Blackburn (then Mr. Justice Blackburn) referred to what he described as the old query of Lord Ellenborough as to a man passing over the land of another in a balloon, and to Lord Ellen-