

Canada Law Journal.

VOL. XLIV.

OCTOBER 1.

No. 19.

"CASTLES IN THE AIR."

Castles in the air have heretofore been usually considered mere creatures of the brain, with no substantial existence; the Supreme Court of Canada has, however, recently determined that under the Statute of Limitations of Ontario a good legal title by possession may be acquired to a castle in the air. So that we see such structures have ceased to be mere creatures of imagination and become a matter of mundane interest, and actions of ejection for castles in the air, and for injunctions to restrain interference with the possession or enjoyment thereof, may be looked upon as legitimate branches of our legal procedure.

Every man's house, as we all know, is his "castle," a room is also, as we all know, a structure above the ground and is more or less "in the air." If it is in an upper storey of a house it is very much "in the air," and if it happens to be a man's house it is a veritable "castle in the air," and it is to the legal rights respecting such a structure that the Supreme Court of Canada has been applying the resources of its legal lore, and has solemnly determined by a majority of its members that such a structure is not merely "a castle in the air," but is actually "land," to which a possessory title may be acquired under the Real Property Limitations Act. But for this solemn decision, we should have been tempted to think that such a proposition was ridiculous, but courts of law have, by their decisions before now, made the law what the celebrated Mr. Bumble was pleased to term "a ass."*

The case in which this interesting conclusion was reached is *Iredale v. Loudon*, 40 S.C.R. 313, on an appeal from the Court of Appeal of Ontario, reported in 15 O.L.R. 286.

*See, for example, the comment of Jessel M.R., in *Couldery v. Bartrum*, 45 L.T. 690, on the doctrine of *Cumber v. Ware*, 1 Str. 426; and cf. Ont. Jud. Act, s. 58(8).