

slur upon the Englishman's sense of fair give-and-take, nor on his hospitality, to predict that in course of time a line of judicial authorities will come into being, defining the rights, obligations, and duties of the aviator in relation to the property of persons over which he flies.

We shall, in the first place, consider the right of the aviator to fly over the lands of private owners. We shall consider, in other words, the aviator's title to the use of the air.

Before the days of aerial navigation there was little occasion to question the soundness of the old maxim of our law, *Cujus est solum ejus est usque ad cœlum*. "Land hath, in its legal significance, an indefinite extent upwards as well as downwards," says Blackstone, citing the maxim just quoted; "therefore, no man may erect any building, or the like, to overhang another's land": see Blackstone's Commentaries on the Laws of England, Book 2, p. 18 (1791 ed.). This was a convenient way of looking at things. It suited the exigencies of life when flying was unthought of; but it has the vice of misleading the unwary into the assumption that there is, as it were, a column of territory extending upwards to an indefinite height, which territory cannot be rightfully traversed by another party. As Sir William Brett, when Master of the Rolls, observed in his judgment in the case of *Wandsworth Board of Works v. United Telephone Company*, 51 L.T. Rep. 148 13 Q.B.D. 904, at p. 913, the phrase is a fanciful one, just as fanciful as the old sister maxim, *Cujus est solum ejus est usque ad inferos*.

Now, what was the foundation for the conception? Probably no better explanation can be given than that given by Lord Coke, who cites three cases in the old Year Books in support of the accuracy of the maxim. Coke attributes the rule of law embodied in the two maxims to the preponderant importance of the land's surface over all the other elements. "This element of the earth," he says (Co. Lit. 4a), "is preferred before the other elements: first and principally because it is for the habitation and resting place of man; for man cannot rest in any of the other elements, neither in the water, air, or fire." He then