

in navigation or rights of ownership extending upwards indefinitely into space. Indeed it is only when "coelum" is supposed to connote a definite limiting blue vault that the phrase *usque ad coelum* can be given any meaning, and since the suggested connotation is admittedly false some further explanation and definition of the maxim is obviously necessary. Broom's translation of it is "He who possesses land possesses also that which is above it." Possession, however, involves control, and the statement is certainly not true of the air which blows across the land as wind. Moreover, projections from adjoining lands appear always to have been dealt with rather as interferences with user than as giving rise to any possessory rights. Momentary interferences with rights of ownership, such as for example, shooting across a parcel of land (1) seem equally to be properly regarded as interferences with user. There are indeed no cases in any books extending the rights of an owner of the surface beyond the space above it necessary to its reasonable use.

On the other hand, Lord Ellenborough in 1815 (2) said: "I do not think it is a trespass to interfere with the column of air superincumbent on the close. If this board overhanging the plaintiff's garden be a trespass it would follow that an aeronaut was liable to an action *quare clausum fregit* at the suit of every occupier of a field over which his balloon passes in the course of his voyage. Whether the action may be maintained cannot depend upon the length of time for which the superincumbent air is invaded." His remark was fifty years later referred to by Blackburn, J., in the course of an argument as "the old query of Lord Ellenborough as to a man passing over the land of another in a balloon," and he added, "I understand the good sense of that doubt, but not the legal reason of it." (3) Lord Ellenborough's denial of the importance of the element of

(1) *Clifton v. Bury* (1887), 4 Times L.R. 8; *Whittaker v. Stangwick* (1907), 100 Minn. 386. See also *Ellis v. Loftus Iron Co.* (1874), L.R. 10, C.P. 10; *Hannablon v. Sessions* (1902), 116 Iowa 457.

(2) *Pickering v. Rudd* (1815), 4 Campbell 219.

(3) *Kenyon v. Hart* (1865), 6 B. & S. 249, at page 252.