

it, should pass immediately over his own property, and a collision with an emulous flyer through space occur, with ill consequences to both, or the former only, could he, in the latter event, claim redress from the other? Might not his brother-pilot be able to shew the juster title to compensation? Would the individual poised in a balloon or aeroplane over the messuage of a neighbour, be a trespasser, pure and simple, accepting the risk of being answerable in damages to any and every one whom he should harm? And would he be disentitled as well to recover from all and sundry who might do him injury? The matter of a descent by a supernal Jehu on another's land, from which damage follows, offer apparently no great difficulty. One of these was the subject, as far back as 1822, of judicial inquiry and determination in the forums of New York State—*Guille v. Swan*—which is reported in 10 Johns. 381. There plaintiff was awarded damages resulting from the act of a manipulator of a balloon, who, finding that his descent was going to be precarious, invited help from a crowd of people. These, rushing hurriedly to his assistance, trampled down, in their well-meant efforts, a crop of vegetables in plaintiff's garden. It may be observed, by the way, that the court lays down the proposition that ascending in a balloon is not per se unlawful.

Perhaps one's right to use the superambient air is in the nature of an incorporeal hereditament, though, on the other hand, the public may demand to exercise it as a franchise not unlike that of common warren. Is the maxim now being discussed, however, true, absolutely and unequivocally?

Lord Ellenborough appeared to think not, when, in *Pickering v. Rudd*, 4 Camp. 219, he controverts the proposition that a landowner would have the right exclusively to the air above his enclosure. The principal has been commented on recently by Kay, L.J., in *Lemmon v. Webb*, 3 Chy., who says, at page 20, "but Lord Ellenborough doubts whether the passage of a balloon over land would be a trespass; while Blackburn, J., questions the authority of that decision in *Kenyon v. Hart*, 6 B. & S. 249. Maude, J., intimates a like doubt in *Fay v. Prentice*,