

a trespass quare clausum fregit. This was the view his Lordship took in the case of *Pickering v. Rudd*, *sup.* But if the shot fell on the soil of that land, the learned judge thought that trespass would have lain. "I once had occasion," said his Lordship, "to rule upon circuit that a man who, from the outside of a field, discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. A very learned judge, who went the circuit with me, at first doubted the decision, but I believe he afterwards approved of it, and that it met with the general concurrence of those to whom it was mentioned."

It seems, indeed, quite clear on general principles that once there is any physical contact with the land, or with the buildings, erections, trees, or herbage standing or growing on the land, there is a trespass. Where there is no physical contact, but the enjoyment of property is interfered with by, for instance, the frightening of horses, or even the frightening of persons of ordinary courage, by the close proximity of aircraft, it cannot be doubted the court's interference could be obtained to restrain annoyance by such causes, and that an action would lie for damages caused by and directly attributable to the flight of an aeroplane over a man's property.

One point may be added in conclusion. At common law the public—that is to say, such members of the public who are afloat—have a right in times of peril to land on the seas'ore irrespective of the question of ownership. That is an ancient right ancillary to the equally ancient public right of navigation, and is paramount to all private rights of ownership. As Lord Hale has said (*De Portibus Maris*, p. 53), in a case of necessity, either from stress of weather, assault, or pirates or want of provisions, any ship might put into any creek or haven. "All places in the case of necessity are ports": see the judgment of Mr. Justice Holroyd in *Blundell v. Catterall* (1821), 5 B. & Ald. 268, at p. 295. It would not be a great stretch of principle were the common law to extend the same protection to those who navigate the air instead of the sea, and find themselves for some unforeseen cause forced to descend as best they can.