

The next question of outstanding importance is the relation between the rights of navigators of the air and the rights of the owners of the ground over which they fly. Heretofore the law has been concerned with the rights of men in the use of the surface of the earth. During the process of the definition of those rights in the development of the English common law the maxim *cujus est solum ejus est usque ad coelum* has been laid down and applied. The maxim itself is first found in Coke (1) who cites in support of it three cases from the Year Books, of which the earliest is in 22 H.VI., and the latest in 14 H.VIII. In the most important of them (2) a landlord who had reserved the woods and underwoods was held not to have reserved the "herons and shovelers" nesting in them, but, on the contrary, that the lessee took in height all the air which nourished the trees and all the profits which came from them. The limitation upon the height to which the rights extended is not without significance. The rule, however, was stated in its broadest terms by James, V.C., in 1870 (3). He said "The ordinary rule is that who ever has got the solum—whoever has got the site—is the owner of everything up to the sky and down to the centre of the earth." His statement of the rule was made, however, for the purpose of giving effect to a partial exception from it, while in 1884, Brett, L.J., referred to the extension of a surface owner's rights to the centre of the earth as being a "fanciful phrase" and added that "usque ad coelum" was to his mind "another fanciful phrase" (4). In the same case Bowen, L.J., said he would be loath to suggest or to acquiesce in a suggestion that an owner of land has not the right to object to anyone putting anything over his land at any height in the sky, but his emphasis is upon the word "putting" which seems to involve the idea of construction and permanency, rather than the use of the air for support

(1) Co. Litt. 4a.

(2) 14 Hy. VIII., 12.

(3) Corbett v. Hill (1870), L.R. 9 Eq. 671.

(4) Wandsworth Board of Works v. United Telephone Co., (1884) 13 Q.B.D. 904, at p. 915.