

decision of the Supreme Court of Canada in *Iredale v. Loudon*, 40 S.C.R. 313, where it was held that a tenant might acquire a statutory title to the possession of a room reached from the street by a stairway notwithstanding that the owner of the land had possession of all the rest of the house above and below the room in question; so that in that case the tenant acquired, according to the decision of the Court, a possessory title to a sort of a castle in the air, he had no right to the air or land beneath the room, and none to the air above the room in question, but was held to have acquired a possessory title in that particular strata wherein the room was situate. If his view of the rights of the parties is correct then the saving of the plaintiff's rights as to an easement in *Devault v. Robinson* was unnecessary because as to that part of the *locus in quo* occupied by his eaves he was in possession, and his ownership had not been extinguished by the defendant's possession of the surface of the underlying strip of land. According to sec. 2 (c) of the Limitations Act, land includes messuages. A house is a messuage, and the eaves of a house are consequently included in that term as being part of a messuage; and it is clear that as to this part of the plaintiff's messuage, no promissory title had been acquired.

How far *Devault v. Robinson* is in conflict with *Kinloch v. Rowlands* it is somewhat difficult to determine. Supposing no wall had been erected in the latter case, the grazing of the defendant's cattle beyond the centre line of the ditch would have given him no title; and the Court held that the erection of the wall made no difference. In the *Devault* case it is not clear by whom the fence between the plaintiff's and defendant's properties was erected, but the strip of 4 or 5 feet between the houses of the plaintiff and defendant appears to have been used as a passageway by the defendant since 1899, it is therefore probable that he had acquired an easement therein; but we venture to doubt whether his possession, having regard to the case of *Kinloch v. Rowlands*, was sufficient to give him the fee in that part of the strip which was not actually enclosed. One test is, could the plaintiff have brought an action of ejectment? Would not the defendant be able to say I am not in possession of the land, it is open and