

not vested in the plaintiffs, but that although the plaintiffs were entitled to so much of the area which was above the surface as was the area of the ordinary user of the street as a street, the suspension of wires from chimneys did not interfere with the ordinary user of the street in question. It is clear from the judgment of Brett, M.R., that he did not question the law as stated by Lord Coke, and that not only the owner of land under a grant is entitled to the free user of the air above the land, but that the word "street" in an Act of Parliament includes the air necessary for the ordinary user of the street.

Moreover, it is common enough to commit trespass by wrongful entry below the ground as by mining, and there seems no reason why wrongful entry above the surface should not similarly constitute an act of trespass. The improbability of actual damage is irrelevant to the pure legal theory, neither is it necessary that there should be force nor unlawful intention; there seems every reason to support the proposition that the mere flight over a person's land is an act of trespass, and that an action would lie against the offending aviator.

(2) The owner of land upon which a trespass is committed is entitled to remove the trespasser, and may use in so doing that degree of force which is necessary to eject the wrongdoer. The right to eject being a remedy whereby the owner of property may assert his rights, the following question may shortly come before the court to be decided.

Acts of trespass to land have been committed by A. flying repeatedly at a level within the height of ordinary buildings over B.'s land. B., instead of bringing an action for damages, or for a declaration that A. is a trespasser, or to restrain him from further acts of trespass, determines to terminate at once the annoyance by exercising his right of ejectment.

It is not easy to see how the owner could enforce his right, except by shooting at the aeroplane with the object either of frightening the aviator away, or of "winging" his machine and compelling the aviator to descend; and the question at once arises,