

is said that this interest must not be construed as meaning an interest or share in the subjacent soil forming the site of the house or building in which the room or flat is situate. And if that be so the case is not within the definition of land in section 2 (1) of the Real Property Limitations Act." And Garrow, J., remarked: "It is clear that unless the plaintiff is now able to make good his right whatever it is against the lower floor, or soil as well as to the upper floor, his claim must wholly fail, for it would be absurd to hold that he has acquired a title to the upstairs alone, which right the defendants might immediately destroy by pulling down the walls of the lower story. A claim wholly 'in the air' and without reference to the soil or surface could not be made under the statute."

The Supreme Court of Canada has got over this difficulty by declaring that the right of possession of the room draws with it a right of support.

With the greatest respect to the majority of the learned judges of the Supreme Court we venture to doubt whether they have correctly interpreted the passages from Coke and Preston which Mr. Justice Duff referred to as establishing that an upper room is "land."

The passage in Coke Lit. is as follows: "A man may have an inheritance in an upper chamber, though the lower buildings and soil be in another, and seeing it is an inheritance corporeal it shall pass by livery." This, of course, does not say that the chamber is "land," but merely that it is property of such a character as may be the subject of inheritance and may be conveyed by the same method as land.

The passage from Preston is however more explicit on page 8. He says: "Land comprehends all external subjects which are the objects of sensation, and admit of manual occupation *and are in their nature permanent and immoveable*; in short, *are part of the terrestrial globe*. Thus a house, a garden, an orchard, a field, etc., is land. Of an upper chamber a feoffment may be made; of course, it is a corporeal hereditament, in other words, land."