

THE EARTH HATH HE GIVEN TO THE CHILDREN OF LAND OWNERS.

For The Public.

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VESTED RIGHTS.

The Supreme Court of the United States, a week or two since, decided a case of more than ordinary importance to owners of real estate and others.

We have not yet received a full copy of the opinion, but because of the importance and novelty of the issues decided, present a resumé sent in by a reliable person.

The Manhattan Aerial Navigation Company is the owner of a fleet of air ships, which transport freight and passengers from point to point in Greater New York, and from the City of New York to many other cities of the Union. It has well established routes for its ships, and under the regulations established by the City of New York for city traffic, and by the State for *intra* State traffic, and by the Congress of the United States for inter State traffic, the Manhattan company has the exclusive right to use these routes. The necessity for exclusive use is apparent, for without it there would prevail the same sad conditions that formerly existed, that is, collisions, etc.

For the use of these roads the Manhattan company, and for that matter all other aerial navigation companies, have heretofore refused to pay. The claim has been advanced by these companies that the air was free, that no one had a monopoly of the air, any more than any one had a monopoly of sea navigation—so much in use up to recently. They contended further that it was proper enough to lay out lanes, along which ships might travel, etc., but they denied that anybody could charge for the use of these lanes, excepting, of course, the governmental charge for surveying the routes, policing them, and like things.

Owners of real estate have always contended (This journal has consistently supported the claim.—Editor Real Estate Register.) that the owner of a plat of ground owns everything beneath and above it, or as the law phrases it—down to the center of the earth and up to the sky above. (*Cujus est solum, ejus est usque ad coelum.*) This has been laid down in so many decisions that it would be superfluous to cite them; it is elementary, and a change of the rule would violate the most sacred traditions of the Anglo-Saxon Race.

No amicable settlement being possible, Mr. William Fitzhugh De Astor, a citizen of England, but a holder of much real estate in New York City, filed his suit in the Circuit Court of the United States for the Eastern District of New York.

The plaintiff set forth that altogether the route used by the Manhattan company covered a space of 100,000 square feet, upon any given plane, above the plaintiff's ground; that this was well worth an annual rental of \$1.00 per square foot, etc.

The defendant demurred, but the demurrer being overruled, as lawyers term it, the defendant answered that the air had no value, the amount claimed was excessive, etc.

In the lower court the jury found for the plaintiff, and assessed the annual rental at \$50,000, being one-fifth of the rental value of the ground.

The Manhattan company carried the matter to the Court of Appeal, and the issue was finally submitted to the Supreme Court of the United States.

Numerous and eminent counsel appeared on both sides, for it was a test case, involving untold sums of money. All the arguments that ingenious and learned and talented counsel could think of were advanced, and after having the case under consideration for nearly three months, the Supreme Court finally affirmed the lower court, four of the nine Justices dissenting; and it is now the settled doctrine of the land, unless the Court should hereafter reverse itself, that balloons or other aerial craft, have no right to navigate the air without the permission of the owner of the ground beneath, who, of course, is the owner of the air above it, even as he is the owner of the coal or other mineral deposit below the surface.

It is indeed strange that this should ever have been contested. If I who own the surface do not own up to the sky, then how far up do I own? And if I own all the way up, how can any one make use of the air above my ground, unless with my consent? The whole contention is preposterous, and the decision of the Supreme Court emphasizes the idea which we have so often set out, that every invention and discovery, every improvement in machinery, medicine, science, art or what not, must and eventually does redound to the benefit of the owner of real estate.

When a man buys a piece of real estate, he buys all its potentialities. Take printing presses, as an instance. Until the invention of the presses now in use, a press covered a vast area. This, of course, was worth a certain rental. When the present press was invented the area occupied by a press of treble the capacity was less than one-fourth the area occupied by the old. Result, as we see it everywhere: the smaller area brought the owner as much rent as the greater did before the invention of the new press. And it is entirely right that it should be so, because all that the printer wanted was a piece of earth to put his press on, and the smaller space was after the invention worth more than the larger area before the invention. Now, desirable sites for presses do not

increase, but need for presses does. As more presses were needed to supply the demand, the competition of the owners of presses soon raised the value of the sites.

So with aerial navigation, its discovery and the invention of processes which made it possible rebound to the benefit of the owner of real estate, even as the discovery of gold would. Suppose science found some way to utilize the common earth ten or fifteen feet below the surface of the ground in New York, quite naturally the owners of those surfaces would benefit. Therefore we have always advised investment in real estate. It does not matter where you buy, the constant increase in population, by immigration and naturally, the discovery of uses for ground not heretofore dreamt of—all will sooner or later make valuable the present least productive ground. Think of the value which would be added to city real estate, if our engineers and architects succeeded in building houses two hundred stories high, even as they now build houses one hundred stories high. Nor is that impossible. Ten years since—in 1905—forty stories was considered quite wonderful. Forty stories since—in 1875—eight stories was the greatest height. It does not require much reasoning to demonstrate that a building one hundred stories high makes the ground on which it stands ten times more valuable than it would be if you could erect only a ten-story building.

The decision of the Supreme Court must be gratifying, not only to owners of real estate, but to that large and conservative and patriotic element which holds dear as life itself the preservation of every vested right. Once the foundations of that class of rights are permitted to become shaky, and the proudest boast of Anglo-Saxon civilization will be a thing of the past. So long, however, as our courts maintain vested rights in all their integrity, progress and enlightenment will follow enterprise in every field of human endeavor. The merchant, the miner, the manufacturer—all will feel that their labor is not in vain, so long as the courts will protect the right of every man in what he owns; and no fanciful and fantastic speculations about the freedom of the air, or any like anarchistic or socialistic doctrine, must be permitted to influence the rock-ribbed principles of justice and right as laid down by our fathers. Again we say: "*Cujus est solum, ejus est usque ad coelum.*"

The Manhattan and all other corporations should arrange with the owners of the soil over which the airships are navigated. The various legislatures should enact legislation to expropriate these routes, in the same way that ground is at present expropriated for railways, etc. The right of eminent domain possessed by a sovereign people will serve to control the avarice of any land owner.

It may also be well for the legislatures to establish what may be called aerial public roads for general use. Rights for that purpose can be purchased from land owners, and any difference in price, or obstinate refusal to sell, can be referred to the courts for settlement, under the well understood principles of eminent domain and expropriation proceedings.

SOLOMON WOLFF.

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UNCLE SAM'S LETTERS TO JOHN BULL.

Printed From the Original MS.

Washington, D. C.

Dear John:

The world was made for the English sparrow;
Ask him, ask him.

The world was made for the English sparrow;
Ask him if 'tis true.

I've grown somewhat keeful of makin' rhymes, John, but I send this one over the ocean freely, knowin' it can be no worse than the sparrow you sent me. I admit he has character. He wigs his partner in the rain, standing knee deep in the gutter as he pulls hair. His little back is solid self-conceit. He is a very Chevalier Bayard in being without shame, but I couldn't say he was without reproach, and he is mightily like some people I know.

I'm a buildin' warships myself, and increasin' my army, but sometimes I have lucid intervals and would he willin' to shift the whole raft of fighters to that particular heaven where fightin' is holy. And these new battleships in times of peace, because somebody else has one, as if they were Easter bonnets! I yield, but I tell you I don't take much interest. But why battleships in times of peace, if you are going to live right? The fashion changes before you get 'em built. They are no good nowhere. Their guns explode in the turrets and kill the men. They blow up themselves, and get us into a war, for it's easier to fight Spaniards (by proxy) than to own up the coal bunkers were too near the magazine. They are useless agin anarchists, for their guns will not reach Paterson, New Jersey, the Postmaster General, nor the Supreme Court. Then why should my farmers sweat in the mow to keep 'em a-goin'? Why should my farmers pay one million dollars a year to support each battleship, because Roosevelt and Hobson got so scared in the Spanish war that they are rattled yet? And what are these warlike men afraid of? Both live inland, when at home; and there never was a time when inland people were more safe from Japanese than now. I can't understand it. Muskeets are coming, and flies, but Japanese? Oh, scare me with something mean and white!

Why, right around from the President's house,