

- upon the subject, actual fixtures, of course, pass under it, and as to improvements *doubtful* in their nature, the inquiry is, whether they have become part of the realty? If they have, they must be considered as done by way of permanent improvement, for the general benefit of the estate, and not for its temporary enjoyment, and they pass by the mortgage.
- A mortgage was executed of the real estate of a manufacturing company, consisting of land and the buildings thereon, without any express stipulation as to fixtures. HELD—that machinery subsequently placed in the buildings, so as to become fixtures, passed by it, and enured to the benefit of the mortgagee.
- Machinery in a cotton mill, used for the purpose of manufacturing cotton, such as looms, cards, spinning-frames, speeders, &c., and fastened to the building so as to secure their uniform and steady operation, are not fixtures.
- As between mortgagor and mortgagee, if the annexation be such as to make it impossible to disunite the personal from the real estate without injury to both, and especially without injury to the latter, the personal will be regarded as real estate, though not affixed *perpetui usus causa*.
- As between such parties, the question is whether the thing so claimed to be a fixture is so attached as to become parcel of the freehold; and this is a question of fact depending on the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them.
- The ancient rigor of the rule in regard to fixtures has been mitigated in modern times, and the tendency and spirit of recent decisions is to a still greater relaxation, not only as between landlord and tenant, but also as to parties between whom it has hitherto been applied with more strictness.
- Where the holders of the liens on machinery and fixtures, and on the building, are different parties, and rent has been received for the use of the whole property, by the trustees before the sale under the decree, in apportioning such rent, there should be given to the holders of the lien on the machinery such proportion as according to proof they would be entitled to in view of the greater wear and tear of the machinery.
- Where a mortgagee purchased the mortgaged premises at the trustees' sale, and took the property wholly discharged from the lien of the mechanic, a purchaser, whoever he may be, from such mortgagee, must take a title equally exempt from the lien.
- The lien of the mechanic under the Act of 1838, ch. 205, and its supplements, for work and labor and materials furnished, is in subordination to prior incumbrances, but subject to such incumbrances, the mechanic has a lien on the building and the ground covered by it.
- By the 4th section of the Act of 1845, ch. 176, machines are rendered subject to the lien "*in like manner*" as buildings are made subject thereto by the original Act, and hence the lien of the machinist must be subordinate to prior incumbrances.
- Proceedings under the lien laws, though in the nature of proceedings *in rem*, are not purely of that character, and unless the notice by advertisement