

THE CHANCELLOR :

This case, which comes before the Court, upon exceptions to the report of the Auditor, presents several questions of interest, one of which, at least, is admitted on all hands to be involved in much perplexity and doubt. That no clear and well-defined rule can be extracted from the adjudged cases, in reference to the law of fixtures, must be conceded; and it is by no means my purpose to attempt to perform a task, which certainly has not hitherto been performed in a manner which has met with general approval.

The counsel, by whom the rival claimants in this case are represented, have certainly displayed great research in collecting the authorities upon the subject, and they have been explained and commented on, in the argument, with unusual discrimination and ability.

The proceedings show that the Powhatan Manufacturing Company, being indebted to the Bank of Baltimore in a large sum of money; for the purpose of securing the payment thereof, executed to the Bank, on the 24th of March, 1841, a mortgage of certain lands, tenements, hereditaments, and leasehold estates, situate, and lying in Baltimore County, "together with all the buildings and improvements on said land, including the mill, factory, dwelling, and other houses thereon erected, made or being," &c., "and all the machinery and fixtures in said mill, or factory being," &c. The condition was, that the mortgagor should pay the debt as required by the mortgage, and in case of default, then it was declared to be lawful for the mortgagee to procure, by the decree of any court of competent jurisdiction, a sale to be made of the mortgaged property, for the payment of the mortgage debts and costs.

Prior to the date of this mortgage, to wit, on the 5th of February, 1828, there had been conveyed to the mortgagor ten acres of land, or thereabouts, which land was not embraced in the deed to the Bank. The Bank's claim, as stated by the Auditor, and marked claim No. 1, amounted, on the 9th of July, 1851, the date of the trustee's sale, to the sum of \$27,535 59, whilst the dividend allowed upon it, in the accom-