

The machinery, the proceeds of the sale of which give rise to the present controversy, consists in part of the steam-engine and boilers, constituting the motive power of the factory, and the machinery by which the cotton was manufactured, and which is described in the mortgage given to the Savage Manufacturing Company.

So far as that portion of the machinery is concerned which supplied the motive power and which was affixed to and placed in the building, in the manner described by the witnesses, it seems upon authority to be too clear for dispute, that it must be regarded as a part of the freehold, and as falling within the operation of the mortgages to the Bank and Wilson.

The counsel for the Messrs. Denmead pressed upon the Court the circumstance that this machinery was placed in the building after the execution of the mortgages, but so far as I am informed by the authorities this makes no difference. *Winslow vs. The Merchants' Ins. Co.*, 4 *Metcalf*, 306, is a direct decision upon the point, and I have been furnished with no case to the contrary, though numerous cases establishing the same principle have been produced and could be cited if necessary.

The authorities which prove that machinery of this description, affixed to a building for manufacturing purposes, becomes a part of the freehold, and as between mortgagor and mortgagee belongs to the latter as part of his security, are numerous and conclusive. The case cited is a strong one upon the question, and there are none so far as I am aware at variance with it, and it is fully supported by the cases of *Powell vs. The Mouson and Brimfield Manf. Co.*, 3 *Mason*, 459; *Farrar vs. Stackpole*, 6 *Greenlf.*, 154, and *Voorhis vs. Freeman*, 2 *Watts and Serg.*, 116.

It has been contended, however, that as by the terms of the mortgage to the Bank the machinery in the mill or factory then in existence passed, and as the Powhatan factory and the machinery in it was subsequently erected and put up, the latter ought not to be included in the mortgage, as not being within the contemplation of the parties at the time of its execution. The argument is, that the parties by their con-