

tract have made a law for themselves, and that is, that the machinery and fixtures in the Powhatan factory shall constitute a portion of the security of the mortgage, but that machinery, though from its nature and the mode of its annexation a fixture, and as such a part of the realty, does not pass by the mortgage where it appears to have been made and affixed subsequently to its execution.

The mortgage in this case certainly contains no stipulation that improvements or additions to the premises, which are in their nature fixtures shall not pass and be bound as a part of the realty, and therefore the question is, what will be a reasonable and legal construction of its provisions? If the security of the mortgagee is limited to the extent to which the argument would conduct us, it might, perhaps, be insisted, that the new mill itself constituted no part of the security, but this, of course, has not been pretended. In the absence, then, of an express stipulation, one way or the other, the inquiry is as to the nature of the improvement. Has it become a part of the realty or not? If it has, it is to be considered as done by way of permanent improvement for the general benefit of the estate, and not for its temporary enjoyment, *Hunt vs. Hunt*, 14 *Pick.*, 386. This is the rule, says Chief Justice Shaw, in 4 *Metcalf*, 312, "in regard to articles *doubtful* in their nature," but as to additions which are not in their nature equivocal, the deed must of course include them. "If," say the Court, "such improvements consist in actual fixtures not doubtful in their nature, they go, of course, to the benefit and security of the mortgagee by increasing the value of the pledge. The expectation of such improvement and such increased value often enters into the consideration of parties in estimating the value of the property to be bound, and its sufficiency as security for the money advanced." And it may, I think, be very reasonably supposed, that the mortgagees in this case had an eye to such improvements and increased value of the identical nature and character which have been made upon the property mortgaged. The amount stated to be due from the mortgagor at the date of the mortgage was fifty-one