

thousand dollars, and it provides not only for a continuance of this debt, but that it may be augmented to eighty thousand dollars. In view of this stipulation, and looking to the fact that the mortgagor was a manufacturing company, it may, I think, be fairly inferred, that it was in the contemplation of the parties to add to the value of the pledge by improvements in buildings and such machinery as might from time to time be required to carry on the business. So far as such improvements become, *de facto*, part of the realty, and are not in their nature equivocal, the law upon the subject seems to be free from doubt. They are to be regarded as included in the deed, and go, of course, to the benefit and security of the mortgagee by increasing the value of the pledge.

But it is again urged by the counsel for the Denmeads, that they do not claim under the mortgagors, but in opposition to them. That the mortgagors did not own this machinery, but took it subject to their claim, and, therefore, it is supposed this case is distinguishable from the numerous cases which have been cited by the counsel for the Bank.

If, however, I am right in thinking that this particular machinery became a part of the realty, by being placed upon and affixed to it, it became subject to the mortgage, and bound for the debt secured by it, to the same extent in all respects as the building which contained it, and the mortgage being the prior incumbrance the lien of the mechanic must be in subordination to it.

It is, therefore, my opinion, that with respect to that portion of the proceeds of these sales which arose from the motive power furnished by the Messrs. Denmead, they must be postponed to the claims of the mortgagees, the machinery constituting the power being regarded by me as affixed to and a part of the realty.

But upon a very careful examination of the evidence and the authorities relating to the subject, I do not think the machinery furnished by the Savage Manufacturing Company has lost its character of personalty by the mode in which it has been put into the building.