

authorities upon the subject and calling attention to *Potter v. Cromwell*, 40 N.Y. 287, to the point that if the intention of a vendor be to retain the character of personal property in chattels annexed, such intention will prevail, and also to *Voorhees v. McGinnis*, 48 N.Y. 278, to the point that chattels may be annexed to the real estate and still retain their character as personal property. *Tift v. Horton* turns upon the question entirely of agreement between the parties that the title to the personal property, which was machinery in that case, should not pass, holding that such an agreement between the vendor and the purchaser is binding upon the mortgagee of the real estate. In *Tyson v. Post*, 108 N.Y. 217, it is further held that the owner of land can by agreement reimpress the character of personalty upon chattels which by annexation to the land have become fixtures, if they have not been so incorporated as to lose their identity, but this is upon the condition that the reconversion does not interfere with the rights of creditors or third persons, and it is with reference to such interference that the questions of title mainly arise. The decision in this case is based upon the ruling in *McRae v. Central National Bank*, 66 N.Y. 489, that machinery, shafting, etc., become as between vendor and vendee and mortgagor and mortgagee fixtures and a part of the realty, but recognizing the rule that under *Ford v. Cogg*, 20 N.Y. 344, and *Sisson v. Hibbard*, 75 id. 542, such chattels may retain their character as chattels by agreement, for the purpose of protecting the rights of vendors of personalty, or of creditors. It is conceded by all the cases that the rule as between landlord and tenant is more liberal toward the tenant as to chattels placed upon the property for the purpose of carrying on business than as between mortgagor and mortgagee or vendor and vendee: *Ombony v. Jones*, 19 N.Y. 234. As between landlord and tenant, the rule seems to be that while the tenant has the right to remove certain articles during his term, if he does not do so and has a right to the chattels, he is a trespasser technically only if he enters upon the property after his term for the purpose of removing the fixtures: *Holmes v. Tremb*, 20 Johns. 28. In *Lawrence v. Kemp*, 1 Duer, 366, it is held that under such circumstances a tenant may remove chattels after his term expires without subjecting himself to any damage for such removal, even though he be liable for an action of trespass for an entry on the demised premises. The decision in 20 Johns., referred to above, is approved: *Ombony v. Jones*, 19 N.Y. 243.—*Albany Law Journal*.