

Held, that the pecuniary interest of K., appealing from the judgment of the Court of Queen's Bench (appeal side), being under \$2,000, the case was not appealable under R.S.C., c.135, s. 29. *Gendron v. McDougall* (Cassel's Digest, 2nd ed., 429) followed.

Held, also, that s. 3 of 54 & 55 Vict., c. 25, providing for an appeal where the amount demanded is \$2,000 or over, has no application to the present case.

Appeal quashed with costs.

Belcourt for the appellant.

G. Stuart, Q.C., for the respondent.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

FERGUSON, J.]

[Jan. 8.

SCARTH v. ONTARIO POWER AND FLAT CO.

Landlord and tenant—Fixtures—Machinery—Removal of—Provisions of lease—Chattels—Forfeiture of term—Action to recover possession of goods—Evidence of detention.

Where a trade fixture is attached to the freehold, it becomes part of the freehold, subject to the right of the tenant to remove it if he does so in proper time; in the meantime, it remains part of the freehold.

Meux v. Jacobs, L.R. 7 H.L., at pp. 490, 491, followed.

But where the parties have made a special contract, they have defined and made a law for themselves on the subject.

Davey v. Lewis, 18 U.C.R., at p. 30, followed.

In a lease dated in July, 1890, there was a provision that the lessees might during the term erect machinery upon the demised premises, which should be the property of the lessees and removable by them, but not so as to injure the building, etc. The lessees affixed machinery to the building demised, and afterwards, in April, 1892, made an assignment for the benefit of creditors. The lessors elected to forfeit under a clause in the lease, but they permitted M.G., a purchaser of the machinery from the lessees' assignee, to remain in possession, paying rent, until December, 1892, when she ceased, leaving the machinery on the premises. The defendants became the purchasers of the freehold by virtue of a sale under the power in a mortgage in July, 1892, but the lease had come to an end before their title commenced. The plaintiffs claimed the machinery under a chattel mortgage made by M.G. on the 25th April, 1892, and a subsequent assignment from her of the whole of her interest therein, and in March, 1893, they brought this action to obtain possession.

Held, that the machinery was, owing to the provision in the lease, chattels, and the property of the lessees, and continued to be so until they made the