the Excelsior Brick Company. The defendant guaranteed payment of the notes. The making of the notes and the giving of the guaranty were not in dispute. The substantial defence was, that the dealings of the plaintiff with the machine for the price of which the notes were given, after they fell due, had the legal effect of cancelling the notes, or at all events of discharging the surety, the defendant.

The judgment of the trial Judge proceeded entirely upon the theory that the plaintiff had taken possession of the machine under the lien given by the notes (they being what are called lien-notes), and that his retention and use of it were inconsistent with his duty—namely, the duty prescribed by sec. 8 of the Conditional Sales Act, R.S.O. 1914 ch. 136, not to sell within 20 days, nor, if a balance is intended to be claimed, without notice in writing of the intended sale. This seemed to ignore entirely the important circumstance that the machine had, before the notes became due, been affixed to the freehold, thereby losing its character of a personal chattel, and, primâ facie at least, becoming subject to the title to the land.

The intention of the person who affixes is to be regarded. The Excelsior company, then the equitable owner of the land under the agreement to purchase, intended the new machine to take the place of the old one and to become a necessary part of the permanent plant.

The mode and extent of the affixing is also to be regarded. The new machine was placed upon a cement foundation specially prepared for it, bolted down to prevent vibration, and connected with the other steam-driven machinery of the plant—and became a fixture: Hobson v. Gorringe, [1897] 1 Ch. 182; Reynolds v. William Ashby and Son Limited (1904), 20 Times L.R. 766; Gough v. Wood & Co., [1894] 1 Q.B. 713, 718, 719; Wake v. Hall (1883), 8 App. Cas. 195.

The affixing, it must be assumed, was done with the full knowledge and consent of the defendant, a director of the company.

When, in March, 1914, the plaintiff took possession, he did so, not under the lien-notes, but as owner of the freehold and by virtue of the forfeiture provided for in the agreement of sale to the Excelsior company. The plaintiff stood upon that title, and there seemed to be no good reason why he might not so stand, and might not also claim payment of the lien-notes from the Excelsior company and the defendant as guarantor.

The fact that the machine itself, after several months' use