machines used on the realty or in connection with the fixtures (in the literal sense of the term,) erected on the land, is not so plain. Where such an article as a boiler or engine is built into a house or fastened upon the land, it may well be called a fixture: it literally is so, and the owner may be considered as having devoted so much of the realty, at all events, as is necessary for the use of such machinery, to the purpose of it, and of having thus intended to benefit the realty. But there is great difficulty in extending this character to articles of machinery which have not been actually affixed to the land, such as those in question here. As I understand the evidence, the defendant erected a machine-shop, into which he fastened a boiler and engine. With this engine, to the extent of its power, he could drive any machinery for which the building was adapted, and which he chose to introduce into it He has there at present a circular saw, a wood-planer, and lathes. He may choose to abandon this description of machinery and introduce something else. He has not in any way declared his intention of making these part of the realty: he has not in fact made them part by attaching the one to the other. The articles are all portable—can be moved by hand from place to place in the building, and out from the building. It is true they are there to be used with certain fixed machinery, with which they can be connected from time to time for the purpose of moving them. But can I say that for this reason they have become fixtures?

I have had the advantage, since the decisions in our own courts above quoted, of examining the following recent authorities bearing more or less upon this question. *Wilson* v. *Whateley*, 1 John & H. 436; *Jenkens* v. *Gething*, 2 John & H. 520; *Haley* v. *Hammersley*, 7 Jurist, N. S. 765, in which Lord Campbell approves of the judgment of Vice-Chancellor Wood, in *Mather* v. *Fraser*, 2 Kay & J. 536; *Bates* v. *Beaufort*, 8 Jur. N. S. 270; *Gibson* v. *Hammersmith*, &c., 9 Jur. N. S. 221. While in many cases articles which have been merely attached to the freehold by nails or screws have been held removable as chattels, when this can be effected by simply drawing the nails or screws without doing damage, I find no case in which portable machines, such as the present, have been treated as fixtures irremovable, when they have not been fastened or attached in some way to the land. This distinction seems to be preserved, not merely for convenience, but because the law leans in favor of trade by treating, when it properly can, articles used in trade as disposable chattels. While, as I have already remarked, on the one hand, the distinction between articles resting by their own weight in a particular position, and articles sustained in it by nails or bolts seems a flimsy one, and not readily sustained by any principle, (a distinction, however, not always observed, as pointed out before;) on the other hand, where this evidence of intention to make any article, in itself a chattel, a part of the realty, and when the act of affixing it there are wanting, it will be almost impossible, in any case, to say what things remain chattels, and what have become part of the freehold.

I think I must treat the machines in question here as chattels.

Gordon v. Ross.

Mortgagor and mortgagee—Insolvent Act—Power of sale.

Where a mortgagor becomes bankrupt the mortgagee is not compelled to go in under the act, but may proceed to sell the property under a power of sale in his mortgage.

This was a motion for an injunction to restrain the sale of a steamboat by a mortgagee under a power of sale contained in his mortgage. The plaintiff was the assignee in insolvency of the mortgagors.

Hoskin for the motion contended that under the Insolvent Act of 1864, section 5, sub-sec. 5, a mortgagee's only remedy was to file a claim in the matter of the insolvency, when the proceedings would be taken which that sub-section points out. He referred also to 9th and 12th sub-sections.

Crombie contra, referred to the 4th and 5th sub-sections as shewing that it was not compulsory on the mortgagee to proceed under the insolvency.

Mowat, V. C., refused the injunction, and held that a mortgagee was not obliged to file a claim, but was at liberty, in lieu thereof, to exercise the power of sale contained in his mortgage.

INSOLVENCY CASES.

(Before His Honor S. J. Jones, Judge County Court Brant.)

(*Reported by* H. McMahon, *Esq., Barrister-at-Law.*)

Henry v. Douglass.

Attachment under Absconding Debtors Act—Attachment under Insolvent Act—Priority.

Where a writ of attachment under the Absconding Debtors Act is received by a sheriff and acted upon by attaching defendant's goods, and afterwards writs of *fi. fa.* are placed in his hands against defendant, and he subsequently receives an attachment against defendant under the Insolvent Act of 1864, *Held*, that defendant's property passed to the official assignee, but that the assignee would be obliged to give the execution creditors the priority to which they would be entitled.

A writ of attachment had issued against the defendant under the Insolvent Act of 1864, to which the Sheriff of the county of Brant made the following special return: — "That before he received the writ he had attached all the defendant's property under an attachment out of the county court of the county of Brant against the defendant as an absconding debtor, at the suit of John Gardham, and that he held such property to satisfy such attachment, and also a warrant of attachment out of the division court, at the suit of James Weyms, in which, judgment was obtained and execution issued before the receipt of the writ in this matter, and also for the benefit of any other attaching creditor, under the Absconding Debtors Act, who should attach in due course of law. That the personal property attached being perishable, he had caused it to be sold, and that the proceeds were insufficient to satisfy the said attachments. That also, before he received the said writ, two *fi. fas.* against the goods and one *fi. fa.* against the lands of the said defendant, were placed in his, the said sheriff's, hands, and that, therefore, he could not place the property and effects of the said defendant in the hands of an assignee or guardian until relieved from the responsibilities and liabilities to the said attaching and execution creditors."