

FIXTURES.

The anchor of a large ship must be very firmly fixed in the ground in order to bear the strain of the cable, yet no one would suppose that it became part of the land, even though it should chance that the shipowner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land.

Since then it is impossible to abide by the old and simple rule which has been mentioned, it is not a matter of surprise that judges, striving to be guided by the intention in each case, have given decisions which cannot all be reconciled. Let a few instances suffice. In *Carscallen v. Moodie*, 15 U. C. Q. B. 304, certain machines for planing, turning, &c., were fastened to the floors and timbers of the building, and worked by belting connected with the engine. It was held that these machines were chattels, and seizable under a *fi. fa.* goods. In *McDonald v. Weeks*, 8 Grant 297, a tenoning machine and moulding machine, worked similarly to the above but not fastened to the floor or building, were held to be fixtures and part of the realty. In an old case in Buller's Nisi Prius, 34, of *Culling v. Tufnell*, a barn erected on blocks of timber lying on but not let into the ground, apart from any question of a customary right of removal in the tenant, was said to be a chattel. Here the decision was evidently based upon the technical definition of the word fixture. On the other hand farming implements, such as a thrashing machine (*Wiltshire v. Cottrell*, 1 E. & B. 674) and a hay cutter (*Walmsley v. Milne*, 7 C. B., N. S., 115) attached to the soil, have been held to be fixtures. In *Gooderham v. Denholm*, 18 U. C. Q. B. 203, three vertical drilling machines fastened with bolts or nuts to the floor or beams of the building, were held to be part of

the realty. A fourth machine of the same character, used for the same purposes and worked in the same way, but standing by its own weight merely, was held to be a chattel. In *D'Eyncourt v. Gregory*, L. R. 3 Eq. 382, statuary within a mansion, and stone lions and garden seats in the grounds about it, were all classed as fixtures, though resting on the freehold simply by their own weight. In *Mather v. Fraser*, 2 K. & J. 536, it is said that nothing is a fixture which can stand by its own weight. Such are some of the decided cases. In some it will be seen that the technical definition of fixtures is rigidly adhered to; in others it has been entirely disregarded. In most cases the Courts have looked at the surrounding circumstances, and while giving weight to the question of the mode and degree of annexation, have been principally governed by the intention with which the chattels have been placed on the freehold.

This conflict of decisions is more apparent than real, and it is possible to elicit certain principles which it is apprehended will govern the Courts in future decisions upon this subject. And we conceive these principles are to be found in two elaborate and able judgments, viz., *McDonald v. Weeks*, 8 Grant 297, and *Holland v. Hodgson*, L. R. 7 C. P. 335. In both cases the language of the judgment in *Hellawell v. Eastwood*, 6 Exch. 295, is cited. It was there said that whether or not a chattel attached to the soil is a fixture, is always a question of fact, depending upon the circumstances of each case, and principally upon two considerations: first, the mode of annexation to the soil or fabric of the building, and whether it could be easily removed without injury to itself or the building; and, secondly, the object of the annexation, whether for the permanent and substantial improvement of the dwelling, or merely for a temporary purpose and the more