they could not. In *Hall Mfg. Co.* v. *Haslitt*, 8 O.R. 465, no question arose as to the fact of annexation *by the owner* of the realty, or as to what articles affixed or placed by him on the land would pass with a conveyance of the land. In *Stevens* v. *Barfoot*, 13 A.R. 373, no decision was called for as to what would have been the legal position if the chattel mortgage had been given first, and the real estate mortgage afterwards. See judgment of Hagarty, C.J., p. 369. In *Rose* v. *Hope* the Court intimated that after the prior chattel mortgage is paid off the mortgage on the realty at once attaches on the fixtures, whilst in *Dewar* v. *Mallory* the Chancellor dissents from this view. Again in *Rose* v. *Hope* the opinion of the Court appears to be that a chattel mortgage on fixtures would be good as against a subsequent mortgagee of the realty, though not filed or kept on foot under the provisions of the Bills of Sale Act. On the other hand the judgment in *Carson* v. *Simpson*, and in *Stevens* v. *Barfoot* indicate that such chattel mortgage would be invalid as against a subsequent mortgagee of the realty, unless the provisions of the Bills of Sale Act were strictly complied with. So that it will be seen that the decisions on this point are not by any means uniform. There is no decision of the Court of Appeal, not even a decision of a single judge in this Province on a state of facts in any way similar to that presented in this case, and if there were a decision of the highest Court of Appeal in this Province on the express point, opposed to a later decision of the English Court of Appeal on the same point, the latter decision should be followed: *Trimble* v. *Hill*, 5 A.C. 342-344; *City Bank* v. *Barrow*, 5 A.C. 664; *Mason* v. *Johnson*, 20 A.R. 412; *Hollander* v. *Ffoulkes*, 26 O.R., 61. And therefore if *Rose* v. *Hope* holds what is contended for by defendants, then it is submitted that this decision is overruled by *Hobson* v. *Gorringe*, (1897) 1 Ch. 182. The maxim, Communis error facit jus does not apply to a case like this: *Caldwell* v. *Maclaren*, 9 A.C. 392.

FALCONBRIDGE, J.—I find as a fact that the plaintiffs when they advanced their money on their mortgage, advanced it on the security of the factory as a going concern, and supposed that all the machinery was covered by their mortgage. This is clearly proved by the evidence of Messrs. Ritchie, Campbell and Case, and I find further on the evidence of Messrs. Campbell and A. W. Smith, and the irresistible cogency of the facts relating to the insurance, that the agent of the mortgagor Perkins understood that the plaintiffs were advancing their money on the building and machinery, and that the machinery was to be covered by the mortgage. I find that Mr. Bullock is mistaken in his recollection of what took place in Mr. Campbell's office when the mortgage was read over to Perkins. Campbell directly contradicts Bullock, and it is utterly incredible that any solicitor of repute would complete the transaction in that form in face of such a declaration by the mortgagor.

I further find, which is hardly in dispute, that Perkins, the owner of the land, placed the machinery in buildings which he had specially constructed for the manufacture of engines, etc., that the machinery was specially adapted for and was essential for the carrying on of such manufacture, and that he intended the machines to remain there "as long as he lived, and to turn it over to his son after he was gone," i.e., permanently. In exhibit No. 9 is