

*Held*, that moulding patterns were part of the "plant," and the evidence shewing that they were necessary to the carrying on of the business of the factory, and that, notwithstanding some of them were not on the land at the time the mortgage was executed, having been sent, as there was no moulding room in the factory, to other establishments for the temporary purpose of having moulding done for the factory, after which they would be returned. The factory was their home, and following *The Canada Permanent Loan and Savings Co. v. The Traders Bank* (1898) 29 O.R. 479, that the patterns were by the terms of the mortgage made parcel of the realty, and the plaintiff was entitled to recover their value from the mortgagor and a purchaser from him.

*Wilkes*, Q.C., and *J. Gordon Smith*, for plaintiff. *W. C. Livingston*, for defendant Barton. *Harley*, Q.C., for defendant C. Rehder. *F. W. Casey*, for defendants Fresh and J. F. Rehder.

Boyd, C., Robertson, J.]

[Feb. 5

SAWYER & MASSEY COMPANY v. ROBERTSON.

*Sale of goods—Destruction by fire—Risk of purchasers.*

The plaintiffs, carrying on business at Hamilton, sold to the defendant an engine and stone crusher by agreement in writing of October 10, 1899, which called for delivery of the goods to the defendant "at ——— Station, Ottawa." It also provided that property should remain in the vendors till full payment of the purchase money. At the time the crusher was in the open at the C.A.R. station, Ottawa, and the engine under cover in a warehouse at the C.P.R. station, Ottawa. On October 18, 1899, certain additional parts required for the machines, and covered by the contract, were shipped by the plaintiffs from Hamilton. On October 23, the defendant telegraphed cancelling the sale, which the plaintiffs refused to agree to. The defendant never took possession of the machines, and refused to sign notes tendered for the purchase money as called for by the agreement, whereupon this action was commenced on January 15, 1900. Afterwards the plaintiffs, upon notice to the defendant, removed the crusher from the C.A.R. station and put it with the engine in the warehouse at the C.P.R. station, and both engine and crusher were destroyed in the Ottawa fire in April, 1900. The defendant had seen where the machines were on October 9, 1899. The plaintiffs' agent had several times urged the defendant, after he had cancelled the agreement, to come and take the goods.

*Held*, that the plaintiffs were entitled to recover on the contract for the full purchase money.

*Watson*, K.C., and *Kirwan Martin*, for plaintiffs. *W. Wyld*, for the defendant.