the court may direct, or for the defendant; in either case with costs.

Afterwards, on the 5th June, 1871, come here the parties aforesaid, and the court is of opinion that the judgment should be for plaintiffs, except as to shuttles and Jacquard looms mentioned in the said special case. Therefore it is considered that the plaintiffs do recover against the defendants the sum of 1,070*l.* 4*s.* and their costs of suit.

The 7th June, 1871.—The defendants say that there is error in law in the record and proceedings in this action, and the plaintiffs say there is no error therein.

The grounds of error intended to be argued herein are, that the looms and drill did not pass to the plaintiffs by the deed of the 7th April, 1869: that the said looms and drill were not fixtures, and were not machinery within the meaning of that deed: that if the said looms and drills passed by the said deed, such deed was, as regards the said looms and drill, void as against the defendants, by reason of the same not having been registered under the Bills of Sale Act.

The following are the points for argument on behalf of the plaintiffs (defendants in error): First, the deed of the 7th April, 1869, passed the looms and drill, and also Jacquard engine and shuttles; secondly, the said articles were fixtures and machinery within the meaning of that deed; thirdly, the said articles passed as part of the freehold, and consequently the deed of the 7th April, 1869, did not require registration under the Bills of Sale Act.

Field, Q. C. (*Kemplay* with him), for the appellants (the defendants).—The question raised in this case is, whether these looms, being used by a manufacturer (the mortgagor) in his mill, and attached to the floor in the way stated in the case, passed to the mortgagee as part of the freehold. If the looms remained mere personal chattels, then, though they might pass under the mortgage as fixtures, yet, as the mortgage deed was not registered under the Bills of Sale Act, it does not hold good as against the defendants. In the court below the rule to enter the verdict for the defendants was, without argument, at once disposed on the authority of *Longbottom* v. *Berry* (22 L. T. Rep. N. S. 385; L. Rep. 5 Q. B. 123), from which it could not be distinguished. This appeal, then, though in form an appeal from the Court of Common Pleas, is in reality an appeal from the Court of Queen's Bench. The real question is, whether these looms ever became part of the freehold. The only difference between this case and *Longbottom* v. *Berry* is that here spikes could be used to keep the looms in their places; in other respects the two cases are undistinguishable. The decision in *Longbottom* v. *Berry* is a departure from the true rule of law. The true rule is laid down by Parke, B., in delivering the judgment of the court in *Hellawell* v. *Eastwood*, 6 Ex. 295. That was a case where some "mules" for spinning cotton had been taken as a distress, and the question arose whether these "mules," when fixed, became part of the freehold. "This," said Parke, B., "was a question of fact, depending upon the circumstances of each case, and principally on two considerations: first, the mode of annexation to the soil or fabric of the frame, and the extent to which it is united to them, whether it can be easily removed, *integre, salve et commode*, or not, without injury to itself or the fabric of the building; secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causa*, or in that of the Year Book, *pour un profit del inheritance*, or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel." That doctrine was cited and approved of as good law by the Court of Queen's Bench in *Parsons* v. *Hinde* (14 W. R. 860); it was also cited with approval by the same court in *Turner* v. *Cameron*, 22 L. T. Rep. N. S. 625; L. Rep. 5 Q. B. 306 [Blackburn, J., cited *Mather* v. *Fraser*, 2 Kay & J. 536.] In *Walmsley* v. *Milne*, 7 C. B. N. S. 115, the court did not impugn the authority of *Hellawell* v. *Eastwood*; the judgment there proceeded on the conclusion in point of fact that the mortgagor had annexed the articles in question to the freehold for the purpose of improving the inheritance. In *Waterfall* v. *Penistone*, 6 E. & B. 876, *Hellawell* v. *Eastwood* was again cited, and approved as laying down the true rule. He cited also *Trappes* v. *Harter*, 2 C. & M. 153; *Climie* v. *Wood*, L. Rep. 3 Ex. 257; Ex. Ch. L. Rep. 4 Ex. 328; *Lancaster* v. *Eve*, 5 C. B. N. S. 717. It appears from a consideration of these authorities, that the true rule of law is that laid down by Parke, B., in *Hellawell* v. *Eastwood*, and, judged by that rule, the looms in this case were chattels, and did not pass by a conveyance of the freehold. As regards the mode of annexation, they were only so annexed that they might have been easily removed, *salve, integre et commode*, without injury to them or to the building; next, as regards the object and purpose of the annexation, that was simply and solely to keep the looms steady and perpendicular to the line of shafting. It was for the more convenient use of the looms, and not for the improvement of the mill as a mill. The steam engine, boiler, shafting and so forth, were, no doubt, as regards the object and purpose of their annexation, attached to the freehold, for they were put up for the more convenient use of the mill as a mill. The mill could not be used as such without the machinery and shafting gear; but the looms were not equally indispensable. To test the question in another way, these looms would not be ratable: *Reg* v. *Lee*, L. Rep. 1 Q. B. 241. He cited also *Wood* v. *Hewitt*, 8 Q. B. 913; *Fisher* v. *Dixon*, 12 C. & F. 312; *Gibson* v. *The Hammersmith Railway Co.*, 32 L. J. 337, Ch.; 8 L. T. Rep. N. S. 48; *Cullwick* v. *Swindell*, L. Rep. 8 Eq. Cas. 249.

Cave for the plaintiffs (respondents)—The looms were intended to pass; secondly, they did pass, and as part of the freehold and not as chattels. What was mortgaged was a "worsted mill," and the mill can hardly be called a "worsted mill" without these looms: (*Haley* v. *Hammersley*, 30 L. J. 271, Ch.; see also Amos and Ferrard on Fixtures, p. 226, *et seq.*) Where the owner sets up looms like these, the presumption is that he does it for the improvement of the inheritance. In *Hellawell* v. *Eastwood* the question was between landlord and tenant. With regard to fixtures to which the tenant is entitled, as against the landlord, to take away at the end