

4th June, 1917, Williams made a bill of sale of the stock, chattels, and fixtures to one Black. On the 11th October, 1917, Black made a bill of sale of the same property to Lillian Finkelstein. She was added as a party defendant.

The plaintiff's mortgage contained the ordinary clause by which the mortgagor is until default entitled to possession of the lands, and an additional provision by which the mortgagor attorned to the mortgagee and became tenant of the lands at a rent equivalent to and payable at the same time as the interest, and which is to be accepted in satisfaction of the interest.

Subject to the question as to the articles being fixtures in fact, the defendant based upon the attornment clause his main contention, viz., that the effect of the clause was to create the relation of landlord and tenant between the parties, and the mortgagor could remove the fixtures as tenant's fixtures.

This was not, however, the situation. By the mortgage all fixtures passed to the mortgagee, subject to the right to redeem; and, if the clause created the relationship of landlord and tenant, the fixtures were the landlord's and could not be removed by the tenant. As tenant, on the expiry of the term, he was bound to surrender them to his lessor. But the true relationship was that of mortgagee and mortgagor.

The mortgagor, by the mortgage of the land, pledges all that can be regarded as fixtures in the widest sense of the term—all things that are actually fixed, and such things as, though not actually fixed to the land, are intended to form part of the inheritance: *Monti v. Barnes*, [1901] 1 Q.B. 205.

The actual intention of the parties here was clear, for the mortgagor said that the fixtures in question were pointed out as part of the security upon which the loan was made.

Reference to *Southport and West Lancashire Banking Co. v. Thompson* (1887), 37 Ch.D. 64, at p. 70; *Stack v. T. Eaton Co.* (1902), 4 O.L.R. 335; *Bing Kee v. Yick Chong* (1910), 43 S.C.R. 334.

All the articles claimed should be declared to be fixtures and to be the property of the plaintiff as mortgagee; there should be an injunction against their removal; and, unless the articles removed are replaced, there should be a reference to ascertain whether any of the defendants removed them and their value.

The defendants, including Lillian Finkelstein, but excepting Isaac Finkelstein, who was made a defendant by mistake, must pay the costs up to and including this judgment. As to Isaac Finkelstein, no costs. Costs of the reference (if any) may be dealt with by the Master.