

*A. Joskin, Q.C., and D. E. Thomson, Q.C., for defendants.*

Apart from *Hobson v. Gorringe*, (1897) 1 Ch. 182, it is submitted that the defendants' rights to these machines and pulleys is clearly established by a line of authorities in our courts extending back nearly 40 years : *Carscallen v. Moodie*, 15 U.C.R., 2 : p. 318 ; *Rose v. Hope*, 22 U.C.C.P. 482 ; *Keefer v. Merrill*, 6 A.R. 121 ; *Hal! Mfg. Co. v. Haslitt*, 11 A.R. 752 ; *Stevens v. Barfoot*, 13 A.R. 37 ; *Dewar v. Mallory*, 26 Gr. 618, 27 Gr. 303.

The Courts, both here and in England, have always insisted that, especially in matters relating to either titles or trade and commerce, a line of authorities once established should not be disturbed except by Legislative enactment : *Larocque v. Beauchemin*, 13 Times L.R. 337 ; *Spargo's Case*, L.R. 8 Ch. 407 ; *Andrews v. Gas Meter Co.*, 66 L.J. Ch. D. at p. 250 ; *Doyle v. Nagie*, 24 A.R. 166 ; *Hobson v. Shannon*, 27 O.R. 116. If *Hobson v. Gorringe* is not reconcilable with the rule which has been established and acted on by our Courts for 40 years, it is submitted that whatever freedom an appellate court might have on the point, a trial Judge here is bound to follow our own decisions rather than the decision of an English Court of Appeal. *Macdonald v. Macdonald*, 11 O.R. 187 ; *Macdonald v. Elliott*, 12 O.R. 98 ; *Moore v. Bank of B.N.A.*, 15 Gr. 308 ; *Chisholm v. London*, 28 O.R. 347 ; Jud. Act, 1895, s. 78. *Hobson v. Gorringe*, was a hire receipt case, and should not be extended beyond what it expressly holds. *Viscount Mill v. Bullock*, 13 Times L.R. 332, shows that *Hobson v. Gorringe* has not changed the rule as to what are fixtures. Any fastening to prevent lateral motion does not make a machine a fixture : *Gooderham v. Denholm*, 18 U.C.R. 207 ; *Keefer v. Merrill*, 6 A.R. 121.

The plaintiffs' contention as to the countershaft appears to be an inversion of the rule of constructive attachment. In *Longbottom v. Berry*, L.R. 5 Q.B. 125 ; and in *Gooderham v. Denholm*, 18 U.C.R. 206, machines were run off countershafts which were securely fastened, yet the Court in these cases held that the machines run off these countershafts were chattels. The machinery is equally of general adaptability, and has no relation to either the buildings or the particular business carried on by Perkins. In the case of a grist mill the evidence shows conclusively that the grist mill and the machinery are made for each other, and therefore *Dickson v. Hunter* does not apply.

*Ludwig*, in reply. *Carscallen v. Moodie*, ante, proceeded upon the ground that the articles referred to, were, in fact, chattels. In *Rose v. Hope*, 22 C.P. 482, it was apparently assumed that the person claiming under the realty mortgage had or must be treated as having had notice of the prior chattel mortgage, otherwise doubtless, the mortgagees of the realty would, on the argument, have invoked the aid of the Registry laws as a bar to the claim to the chattel mortgage. At p. 485 Hagarty, C.J. refers to the fact that Mackenzie took subject expressly to mortgages. The head note in *Dewar v. Mallory*, 26 Grant, 618 is misleading, inasmuch as it does not point out that the chattel mortgage and the realty mortgage were both given to the same person. This decision was reversed 27 Grant, 303. In *Keefer v. Merrill*, 6 A.R. 121, the sole question for decision was as to whether the machines could be constructively held to be fixtures, and the Court under the circumstances of that case held that