

FIXTURES.

During the last session of the Ontario Legislature an important addition was made to the Act of 51 Vict., c. 19, regulating conditional sales of chattels in that province. A recent case in the English Court of Appeal, *Hodson v. Gorringe*, L.R. (1897), 1 Ch. 182 (ante p. 311), decided that where fixtures had been attached to land under a similar hire and sale agreement, a mortgagee of the land without notice of the agreement could hold the fixtures in priority to the vendor. The fact of actual physical attachment is made the test of fixture, and the intention of the parties is treated as entirely immaterial.

By c. 14 of the Act of last session, s. 80, the following addition is made to 51 Vict., c. 19:—"10. (1) Should any goods or chattels, subject to the provisions of this Act, be affixed to any realty, such goods and chattels shall notwithstanding remain so subject, but the owner of such realty, or any purchaser, or any mortgagee or other encumbrancer on such realty, shall have the right as against the manufacturer, bailor or vendor thereof, or any person claiming through or under them, to retain the said goods and chattels upon payment of the amount due and owing thereon."

"(2) The provisions of this section are to be deemed retrospective and shall apply to past as well as to future transactions."

This enactment has not as yet been under consideration in any decided case, but its effect is no doubt to override *Hodson v. Gorringe*. The mortgagee, even without notice, would seem to be able to retain the chattels against the bailor only upon payment of the amount still due under the hire and sale agreement. The manufacturer will obtain by his agreement a right in the nature of an easement or a covenant running with the land, the burden of which will attach to the land even in the hands of a subsequent purchaser or mortgagee, and notice to him is not necessary to create the right. See the remarks of Mr. Justice A. L. Smith in *Hodson v. Gorringe*, at p. 192.