SELECTIONS.

OF THE LAW OF FIXTURES, AS BETWEEN THE HEIR AND EXECUTOR.*

(*From the American Law Register.*)

1. The rule now depends mainly upon the intention of the party in affixing the article to the soil.
2. Most writers upon the subject treat it with reference to the relations out of which such questions are likely to arise.
   (1.) As between landlord and tenant the construction favors removal by the tenant, where that was the evident intention.
   (2.) As between executor and heir, vendor and vendee, all erections and fixtures, intended for permanent use on the land, go with the land.
   (3.) As between the executor of the tenant for life and the remainder-man.
3. The later English cases seem to settle the matter in that country. Cases stated.
4. Statement of some of the American cases. They seem not to follow any clear principle.
5. Enumeration of classes of cases where the decisions have been conflicting.
6. The mode of attaching personalty to the freehold sometimes decides its character, as a fixture.
7. Illustrations drawn from the reported cases upon different subjects connected with fixtures.
8. Instances illustrating the question among the recent decisions.
9. A late English case between mertgagor and mortgagee.
10. The English courts now regard the question as one of intention mainly.
11. The subject of ornamental furniture, attached to the walls and foundation, considered.
12. The devisee will take the fixtures, the same as the heir, and more extensively, in some cases.
13. The tests which are to determine cases of fixture.
   (1.) The character and use of the article will settle most cases.
   (2.) When that leaves the case doubtful, custom and usage control.
   (3.) If there is still doubt, the argument, expectation, or understanding of the parties may be restored to.

1. The full discussion of this topic would carry as much beyond the limits allowable in such a treatise as the present. The inquiry in every case of the kind is, whether the article is attached to the freehold in such a manner, as that it is fairly presumable that it was not intended to be ever separated by the person who placed it there. Hence, in determining what articles are to be regarded as fixtures and what are not, the customs of business, of husbandry, and the general usages of country in regard to the subject-matter, will have great influence in the decision, more than the particular mode in which the article is affixed to the soil or freehold.* So that the old rule of *quicquid plantatur solo, solo cedit*, will now be of but slight weight. And the old case of *Culling* v. *Tuffnal*, where it was held that a barn erected upon pattens or blocks, might be removed, but that if it had been let into the soil it could not have been, would now be regarded as resting on no sound distinction: Bull. N. P. 34.

2. Some writers have sub-divided the question of fixtures into the relations out of which the question ordinarily arises.

(1.) As between landlord and tenant, where the construction is made most favorable to the tenant, for the advancement of good husbandry. But it was said in the early cases, *Elwes* v. *Maw*, 3 East 38, s. c. 2 Smith Lead. Cas. 99; *Horn* v. *Baker*, 9 East 215, s. c. 2 Smith Lead. Cas. 122, † that there appears to be a distinction between annexations to the freehold, for the purposes of trade, and those made for the purposes of agriculture, and better enjoying of the immediate profits of the land, in regard to the tenant's right to remove the same. But that distinction is not much regarded, of late, in the English courts; and seems never to have gained much foothold in this country, where agriculture is regarded as one of the most important public interests. In the case of *Elwes* v. *Maw*, Lord ELLENBOROUGH, Ch. J., considered that the law at that time, as indicated by the prior cases, *Lawton* v. *Lawton*, 3 Atk. 13; *Lord Dudley* v. *Lord Warde*, Ambler 113; *Lawton* v. *Salmon*, 1 H. Black. 259, note (*b*), came to this,—"That where the fixed instrument, engine, or utensil (and the building covering the same falls within the same principle), was an accessory to a matter of a personal nature, that it should be itself considered as personalty." But this, like many other rules upon the subject, will afford but slight aid in deciding the multiplicity of questions arising in the relation of landlord and tenant. The true rule, as between landlord and tenant, seems to be, that all annexations and erections made by the tenant for temporary convenience of enjoying the premises, and with the evident

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*The following article is from the forthcoming work of Judge REDFIELD upon Devises, Legacies and the Duties of Executors and other Testamentary Trustees, which may be expected in a short time.

* This may be well illustrated by different articles. An ordinary grindstone may be placed upon stakes driven firmly into the ground, for convenience of use. So a carpet is firmly nailed to the floor, for the same reason. But no one would ever regard either of these articles as fixtures. On the other hand, some kinds of fence are made to slide upon the land, resting upon a frame; and grates and fireplaces are often laid into the chimney, and removable without the use of force, as are also window-blinds, and doors even. Yet no one would regard them as any the less a part of the reality.

† In the former of these cases, which is still regarded as a leading case upon the subject, it was decided, as between landlord and tenant, that where the tenant erected, at his own expense, and for the more necessary and convenient occupation of his farm, a beast-house, carpenter's shop, fuel-house, cart-house pump-house, and fold-yard wall, which buildings were of brick and mortar, and tiled and let into the ground, he could not remove the same even during his term, and although he thereby left the premises in the same state as when he entered.