If a machine is let into the ground so that in the removal of it the soil will be disturbed, it must be treated as a fixture: Ewell, p. 21; *Mather* v. *Fraser*, 2 K. & J. 536; *Longbottom* v. *Berry*, L.R. 5 Q.B. 123, 125. (See clauses 27, 35, 38, 39, 41, 42 and 44 in this case; *Ex parte Ashbury*, L. R. 4 Ch. App. 630. The engine and boiler are clearly fixtures: *Oates* v. *Cameron*, 7 U.C.R., 228, 231. So are all the other machines which are fastened in any way: *Richardson* v. *Ramsay*, 2 U.C.C.P. 460; *Wilstea* v. *Cotterell*, 1 E. & B. 674; *Climie* v. *Wood*, L. R. 3 Ex. 257; 4 Ex. 328; *Rogers* v. *Ontario Bank*, 21 O. R. 417.

As to machines in machine shop run off countershaft (which is clearly annexed to timbers of building), but not otherwise attached, these must be considered fixtures, because (1) Same were put up by the owner in a building specially constructed for the purpose of a machine or engine shop, and being essential for that purpose they must pass as part of the freehold, especially as the owner in placing them intended them to remain permanently, and form part of the works; (2) When the machines were brought into the shop they were spiked down, and the mere fact that in moving them round from place to place in order to get better light, or for any other purpose, the screws were not replaced, would not deprive these machines of their character as fixtures. The severance must be done by one having the right to sever, and with the intention of converting the article into the state of a chattel: Ewell, p. 44. See No. 20 referred to in *Gooderham* v. *Denholm*, 18 U.C.R. at p. 208; *Grant* v. *Wilson*, 17 U.C.R. 144. (3) And because it being admitted with regard to all machines run off countershaft that the countershaft is clearly annexed to the building, and it having been proved that the countershaft, with the cones and pulleys, was in every case bought with and formed part of the machines, and was essential to their use for the purpose of getting various speeds on the machines, the owner, by affixing the countershaft, with the cones and pulleys, to the building, clearly evidenced his intention to treat the machine as a whole as part of the freehold: *Mather* v. *Fraser*, 2 K. & J. 536.

Whilst a chattel mortgage on fixtures given by the owner of property may be good as against a mortgagor and those claiming under him with notice, such chattel mortgage would not under our Registry laws be valid as against the mortgagee of the land who had duly registered his conveyance, and had no actual notice of the prior chattel mortgage: *Hobson* v. *Gorringe*, (1897) 1 Ch. 182. *Landed Banking Co.* v. *Clarkson*, (unreported, decided by the Chancellor at Toronto non-jury Sittings, February 23rd, 1897.)

At the time the defendant's chattel mortgage of 1892 was given, the property was subject to a land mortgage to Northrop & Lyman, duly registered. The mortgage to plaintiffs was executed and registered before any discharge was registered of this mortgage, and under these circumstances effect could not be given to a chattel mortgage as a declaration of intention to make de facto fixtures chattels. If it should be held that the defendants have higher rights than the plaintiffs because of the priority of their chattel mortgage, then the plaintiffs contend that as their money went to pay off the Northrop & Lyman mortgage they should be subrogated to their rights: *Abell* v. *Morrison*, 19 O.R. 669.