

Eng. Rep.

HOLLAND AND ANOTHER V. HODGSON AND ANOTHER.

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ENGLISH REPORTS.

EXCHEQUER CHAMBER.

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Trade fixtures—Mortgage and assignees of bankrupt—Looms attached to the freehold.

Where an article is affixed to the soil by the owner of the fee, though only by means of bolts and screws, it is to be considered as part of the land; at all events, where the object of setting up the article is to enhance the value of the premises to which it is annexed for the purposes to which those premises are applied.

Trover for looms by mortgagees against the assignees of M., a bankrupt, the mortgagor. M. had carried on the business of a worsted spinner. By a mortgage, dated 1869, he conveyed to the plaintiffs in fee the said mill, in which he carried on his business, "and also all the steam-engine, shafting, going-gear, machinery, and all other fixtures whatever, which now or at any time hereafter during the continuance of this security shall be set up and affixed to" the premises. The defendants subsequently, on M. becoming bankrupt, were chosen as his assignees, and as such took possession of and sold the looms on the premises; and it was in respect of this conversion that this action was brought. The looms were placed in various rooms in the mill. They were driven by steam power, which gave motion to the shafting and going-gear, from drums on which the required communication was given to the looms by means of leather bands, which could be applied to or disconnected from the looms at pleasure. It being necessary for the working of the looms that they should be kept steady and perpendicular to the line of shafting, they were annexed to the floor by means of two nails driven through their feet. After the nails had been driven in, the looms could not be moved without drawing the nails, but this could easily be done without any serious injury to the floors. It was not necessary that the nails should have heads, although, as a fact, they had either flat or square bolted heads; but spikes without heads would have equally answered the purpose; and if such spikes had been used, the looms could have been lifted up and removed, and put back again, without disturbing the spikes. The mortgage deed was not registered under the Bills of Sale Act.

Held, (affirming the decision of the court below), that the looms were fixtures, which passed with the freehold under the mortgage.

Loughbottom v. Berry (22 L. T. Rep. N. S. 885; L. Rep. 5 Q. B. 123), affirmed.

[22 L. T. N. S., 709.—May 23, 1872.]

Error from the Court of Common Pleas.

The declaration was in trover for looms and other fixtures. Pleas, not guilty, and payment into court of a sum that did not cover the value of the looms. Replication, damages *ultra*.

The court below having decided, on the authority of *Loughbottom v. Berry* (22 L. T. Rep. N. S. 885; L. Rep. 5 Q. B. 123), in favour of the plaintiffs' right to recover the value of the looms, the defendants brought error, and the following case was stated accordingly for the opinion of the court:

1. George Mason, of Horton, near Bradford, in Yorkshire, in the year 1869, carried on the business of a worsted spinner and stuff manufacturer at Bank Top Mill, at Horton aforesaid, of which he was the owner.

2. By a mortgage, dated the 7th April, 1869, the said George Mason conveyed to the plaintiffs in fee the said mill, with several closes of land, cottages, and other hereditaments and premises therein described, the parcels thereof so far as they relate to the said mill, being as follows:—"All that worsted mill lately occupied by the firm of Messrs. Thomas Ackroyd and Sons, situate at Horton Bank Top, in the parish of

Bradford, in the county of York, with the warehouse, counting house, engine house, boiler house, weaving shed, warehouse, gas works and reservoirs belonging, adjoining or near thereto; and also the steam engine, shafting, going gear, machinery and all the fixtures whatever, which now or at any time hereafter during the continuance of this security, shall be set up and affixed to the said hereditaments and premises hereby granted and assured, or intended so to be, or any part thereof." The said deed, which may be referred to by either party, was not registered under the Bills of Sale Act.

3. The said George Mason, by a deed, dated 3rd July, 1869, assigned to the defendants all his estate and effects to be administered as if under a bankruptcy. The said deed was duly registered, and everything happened to make it a valid deed under section 192 of the Bankruptcy Act 1861, and the clauses of the Bankruptcy Amendment Act 1868, relating to such deeds.

4. Under the last mentioned deed, the defendants took possession of, and sold, amongst other things in the said mill, the property mentioned in next paragraph as claimed by the plaintiffs. Other articles, both in the Bank Top Mill and in another mill which had also been mortgaged by the said George Mason to the plaintiffs, have been in dispute between the plaintiffs and the defendants, but by abandonment of some claims, and payment into court as to others, the matters in dispute are now reduced to the articles mentioned in the next paragraph.

A copy of the pleadings accompanies and forms part of this case.

5. The plaintiffs claim the following articles as passing by the words of the deed of 7th April, 1869, set out in the second paragraph:

A. 436 looms, sold at	£1,038 4 0
B. 14 Jacquard engines, sold at	9 2 0
C. 660 shuttles, sold at	19 3 4
D. A drill, sold at	32 0 0

6. The looms, which are machines for weaving worsted stuffs and other fabrics, were placed in various rooms in Bank Top Mill, some on the ground floor and some on the first floor. In all cases they were driven by steam power, which was applied to them in the following manner: The steam engine worked or gave motion to the shafting and going-gear, which consisted of long shafts passing from one end to the other of each room, and having fixed upon them at proper intervals large concentric wheels called drums, from which the required motion was communicated to the looms by means of leather bands, which could be applied to or disconnected from the looms at pleasure. The steam engine and the shafting and going-gear were unquestionably fixtures, and passed as such to the plaintiffs under their said mortgage.

The looms slightly varied in size, but each was about 7ft. long by 3ft. wide, and from 3ft. to 4ft. high, and weighed about 7 cwt. or 8 cwt. Each loom stood upon four feet, one at each corner, each foot being a flat piece of iron about 3in. long by 1½in. broad, with a hole drilled through it about ½in. in diameter. It is essential to the proper working of a loom that it should stand