

in this country, would "do violence to the English language" if he maintained that a trolley car in use was "not fixed in any sense whatever" to the rails and wires and power house; and 'fixed' to an infinitely greater degree than fish in an artificial pond, manure upon land, seaweed cast upon the shore, the key to a lock (which may be carried in one's pocket), and a number of other extraordinary things which the courts of England and America have held to be "fixtures." All cases of this class have been decided not upon the theory of actual fixation or annexation to the land, but upon that of permanent accessory use therewith. In *Fisher v. Dixon*, 12 Cl. & F. at p. 330, Lord Cottenham says: "If the corpus of the machinery is to be held to belong to the heir, it is hardly necessary to say that we must hold that all that belongs to that machinery, although more or less capable of being used in a detached state from it, follows the same principle and remains attached to the freehold."

Lord Cottenham's observations are precisely in line with Judge Osler's view, and, as will be seen, *Fisher v. Dixon* is relied on by the latter in the *Kirkpatrick* case. It is also to be observed that the *Kirkpatrick* case was decided along the same lines as those upon which the judgment of the Supreme Court of the United States proceeded in *Pennock v. Coe*, 23 How. 117, where the mortgagees of a railroad were held entitled to the rolling stock as against execution creditors, the mortgage there in question purporting to convey the road "together with the rolling stock, and all other personal property, etc." So in the case of *Farmer's Loan and Trust Co. v. Hendrickson*, 25 Barb. 484, where as between mortgagees and judgment creditors of the mortgagors, all kinds of rolling stock of the railroad company, such as engines, passenger and freight cars, hand-cars, snow-plows, etc., were held to be fixtures. In the course of his very able opinion (adopted by the Court) in the latter case, Strong, J., says: "That railway cars are a necessary part of the entire establishment, without which it would be inoperative and valueless, there can of course be no doubt. Their wheels are fitted to the rails; they are constantly upon the rails, and except in cases of accidents, or when taken off for repairs, nowhere else. They are not moved off the land belonging to the company; they are peculiarly adapted to the use of the railway, and in fact cannot be applied to any other purpose . . . The railway is constructed expressly for the business to