

off counter shaft. (20) *One pipe screwing machine*.—Spiked to flooring. (21) *One power band saw*.—Laid on floor. Holes in legs of machine by which to bolt to floor; driven off counter shaft. (22) *One wood turning lathe*.—Bolted to floor. Driven off counter shaft. (23) *One emery wheel*. Bolted to post and floor. Driven off counter shaft. (24) All shafting, pulleys, belting, etc., necessary to run the same, and all the usual appliances. Shafting bolted to floor joists or beams; bolts going clean through floor.

In 1890 Perkins gave a real estate mortgage to Northrop & Lyman on the premises on which said manufactory was situated, to secure \$4,000. On the 8th July, 1892, he gave the defendants a chattel mortgage to secure repayment of \$3,550. The description of the chattels in this chattel mortgage was as follows: 1 engine and boiler; 1 set 7-foot power rolls, built by McKechnie & Bertram; 3 punching machines; 1 shearing machine; 1 bevel shears; 2 drilling machines, one of them made by McKechnie & Bertram; 1 set 3-foot power rolls; 1 planer, 24 x 24 x 6, made by McKechnie & Bertram; 2 forges, and expander and all other tools, including boiler tools and appliances, which are used by the mortgagor in and about the business carried on by him, and known as The Toronto Engine Works, all which said goods and chattels, machinery, tools and appliances, are now lying and being, in, upon or about the premises where the said mortgagor is now carrying on business, and known as Nos. 201 and 203 Front street east, in the city of Toronto.

On June 1st, 1894, Perkins gave the plaintiffs a mortgage on the lands upon which said manufactory is situated, to secure repayment of \$6,000 advanced to him by the plaintiffs. Part of the money loaned by the plaintiffs was applied in paying off the Northrop & Lyman mortgage, and the balance was paid to Perkins. On July 10th, 1895, Perkins gave a second chattel mortgage to the defendants to secure repayment of \$5,378.55. This mortgage enumerated specifically the machinery, etc., covered by it, and included practically every machine referred to in Exhibit 9. Both chattel mortgages were properly renewed up to the time of the commencement of this action. The defendants having claimed the right to remove the machinery in the factory under their chattel mortgages, the plaintiffs commenced this action, and claimed an injunction restraining the defendants from interfering with or removing such machinery from said premises.

The action was tried before Falconbridge, J., at the Toronto non-jury sittings on the 2nd, 12th, 13th, 14th and 15th of April and 20th of May, 1897.

Ludwig, for plaintiffs.—A mortgage of real estate covers all fixtures on it unless they are expressly excepted: R.S.O., c. 107, s. 4. Where the owner of lands erects upon it a building specially designed as a factory for a particular kind of business, and places therein machinery necessary for carrying on that business, and after all the machinery has been put in and the business established, he executes a mortgage on the land, the mortgagee is entitled to insist that all the machinery which is affixed or let into the soil, and all the machinery resting by its own weight, which is necessary for the purposes of the business, is covered by his mortgage, unless some express exception is made therein: *Ewell on Fixtures*, pp. 21-25; *Dickson v. Hunter*, 29 Gr. 73; *Carscallan v. Moodie*, 15 U.C.R., pp. 317, 323, 325; *Robinson v. Cook*, 6 O.R. 590; *Voghts v. Freeman*, 2 Watts & Sergeant (Penn. Sup. Ct. Rep.) 116.