

to the machinery shall not pass from the plaintiffs until paid for. But, it is said, the words which follow shew that this can have no application to the case of a mortgage registered after sale. The words are, "but the owner of such realty or any purchaser or any mortgagee or other incumbrancer of such realty" shall have the right to retain the goods and chattels, upon paying the the amount due thereon. This does not, in my opinion, refer exclusively to a future mortgagee, but it refers to all persons within the classes of owner or purchaser or mortgagee or incumbrancer of the realty. It is intended to be inclusive, not exclusive. Sub-section 2 of sec. 10, as amended, provides that the provisions of this section shall be deemed to be retroactive, and shall apply to past as well as future transactions. It is true that the Act was passed before the transaction in question arose, but it shews the wide scope of the Act, and, if it were held to apply only to mortgages made after the goods or machinery were contracted for, this construction would cut down its application probably one-half.

I do not think any such intendment can be gathered from the statute. It is quite broad enough, in my opinion, to cover the present case. Nor am I pressed with the suggestion that the statute gives the bare right, unavailing because the plaintiffs have no right to take possession of the machinery, if to do so it becomes necessary to tear down the wall which encloses it. One of the conditions is that in case of default in any of the payments the vendors are at liberty without process of law to take and remove the said machinery, and that the purchaser agrees to waive all claims for damages that he might sustain from such removal.

Having regard to the scope and application of the statute, I am of opinion that the defendants, as mortgagees of the premises from the purchasers, are in no better position than the mortgagors in respect of the removal of the machinery in question. The statute expressly declares that where it is applicable the goods and chattels shall remain subject to the said conditions as fully as they were before being so affixed. The relief given to the owner or mortgagee is the right to purchase the machinery by paying the balance of the price. If he does not do that, he has no right to prevent the same being removed, the vendor doing no more damage than is necessary.