

tiffs, who sought to recover for the conversion of the property affixed to the realty, claimed under a chattel mortgage thereon duly recorded with the records of personal property. Defendant claimed under a real estate mortgage, and he had judgment as to all of the property attached to the realty. The question of notice, either actual or constructive, is not referred to in the opinion, and the case is far from being satisfactory.

*Powers v. Dennison*, 30 Vt. 752, is an important decision on the question of notice. A building was erected by one upon the land of another. It was so attached to the land that it would have become a fixture had it not been for the implied understanding that the creator of it should have the right to remove it. The court held that a subsequent mortgagee of the real estate took a lien upon the building, and could hold it as against the owner, and that the possession of the building by the owner of it was not notice to the mortgagee of his rights. This case, so far as the question of constructive notice by possession is concerned, cannot be regarded as sound.

The decision of the court in *Voorhes v. McGinnis*, 48 N. Y. 278, is, so far as the reasoning of the court is concerned, indefensible. A chattel mortgage was executed upon boilers and an engine, which were subsequently placed in a mill. But they were so attached to the building that they could be removed without material injury either to the building or to the engine and boilers. The court held the lien of a subsequent real estate mortgage prior. The decision was not placed upon the ground that the real estate mortgagee had no actual notice of the chattel mortgage, and that it not being filed, there was no constructive notice. The chattel mortgage may have been filed, but the case does not disclose that fact. The court rested its judgment upon the following reasoning: "I am of opinion upon general principles—that is, unless there be some specific agreement to the contrary, or some circumstances controlling the general rule that the boilers and engines, shafting and gearing, became a part of the realty and passed to the plaintiff upon his purchase. It is said that the execution by Kimmey of a chattel mortgage upon it before it was placed in the mill would be sufficient to preserve its personal character. Although unknown to the plaintiff, this fact existed in the case. It comes to this: A man employs a carpenter and mason to build a brick house for him upon his lot, and pays them in full the price agreed upon. The mason puts his brick in the walls. The carpenter places his joists and timbers in the proper places in the house. The house is finished and is occupied by the owner. It then appears that the maker of the brick held a chattel mortgage upon them, executed by the mason, and that the sawyer of the timber held a chattel mortgage upon it, executed by the carpenter. Are these articles, now a part of the house, still held upon the chattel mortgages so that the creditors can despoil the house to obtain their possession or compel the owner to pay their value?" With all deference to the judge who wrote this opinion, this is *not* what the case came to. The same judge had just before stated in his opinion that the engine and boilers could be removed without material injury. Would that have despoiled the building? The case before the court and the case put by the court, as illustrating to what an injustice the rule