

notes not matured, and B. consented to the sale of one of the mortgaged stocks taking the purchaser's notes in payment, and applying the amount generally in payment of his overdue debt, part of which was unsecured. A few days after B. seized the other stock of goods covered by his mortgage, and about the same time the sheriff seized them under execution, and shortly after the mortgagor assigned for benefit of creditors. An interpleader issue between B. and the execution creditor resulted in favor of B., who received, out of the proceeds of the sale of the goods under an order of Court, the balance remaining due on his mortgage. See *Horsfall v. Boisseau*, 21 Ont. App. R. 663. The assignee of the mortgagor then brought an action against B. to recover the amount representing the unsecured part of his debt which was paid by the purchase of the first stock, and which payment was alleged to be a preference to B. over the other creditors.

*Held*, affirming the decision of the Court of Appeal, that there was no preference to B. within R.S.O. (1887 c. 124 sec. 8; that his position was the same as if his whole debt, secured and unsecured, had been overdue and there had been one sale of both stocks of goods realizing an amount equal to such debt, in which case he could have appropriated a portion of the proceeds to payment of his secured debt and would have had the benefit of the law of set-off as to the unsecured debt under sec. 23 of the Act; and that the only remedy of the mortgagor or his assignee was by redemption before the sale which would have deprived B. of the benefit of such set-off.

Appeal dismissed with costs.

*Gibbons*, Q.C., for the appellant.

*Kappele*, for the respondent.

Quebec.]

[June 6.

LAINE v. BELLAND.

*Chattels attached to realty—Hypothecation of.*

An action was brought by L. to revendicate an engine and two boilers under the resolutive condition (condition resolutoire) contained in a written agreement, providing that until fully paid for they should remain the property of L., and that all payments on account of the price should be considered as rent for their use, and further, that upon default L. should have the right to resume possession and remove the machinery. The machinery in question had previously been imbedded in foundations in a saw mill which had been sold separately to the defendants, and at the time of the agreement the boilers were still attached to the building, but the engine had been taken out and was lying in the mill yard, outside of the building. While in this condition the defendants hypothecated the mill property to the respondent, and the hypothecs were duly registered. The engine was subsequently replaced in the building and used for some time in connection with the boilers for the purpose of running the mill. The agreement respecting the engine and boilers was not registered. The respondent intervened in the action of revendication and claimed that the machinery formed part of the freehold and was subject to his hypothec upon the lands.

*Held*, that notwithstanding the conditions in the agreement, the dealings