

claimants. In these circumstances the Court (Lord Stenale, F.P.D.) held that it was immaterial that the claimants were innocent of any intention to ship the goods to an enemy country—that the doctrine of “continuous voyage” applied, and that in this case notwithstanding the agreement of the Netherlands Oversea Trust Co., the Court was justified in assuming that the ultimate destination of the goods was intended to be an enemy country if the buyers could succeed in evading the restrictions that the company imposed. The goods were therefore condemned.

MORTGAGE — LEASEHOLD — FIXTURES — MORTGAGE OF LEASEHOLD WITH FIXTURES ATTACHED—SALE BY MORTGAGEE—SEVERANCE OF FIXTURES.

In re Rogerstone Brick & Stone Co., Southall v. Westcomb (1919) 1 Ch. 110. In this case a company had issued debentures secured by a floating charge on all of its assets, subject to a proviso that the company should not create any mortgage to have priority thereto. Any debenture holder was empowered to appoint a receiver with power to make arrangements in the debenture holders' interests. The company requiring money, the debenture holders agreed to the creation of a mortgage on the leasehold premises of the company to have priority over the charge. Accordingly, the leasehold premises with fixtures attached were assigned by way of mortgage for the residue of the term. The business of the company not succeeding the mortgagee, who was also a debenture holder appointed a receiver for the debenture holders, who eventually closed down the works, and an arrangement was thereafter made between the mortgagee, who was a solicitor, and the receiver for the latter to offer the loose and fixed plant together for sale, the proceeds of the former to go to the debenture holders, and of the latter to the mortgagee. The action was brought by a debenture holder who claimed that the whole of the proceeds should go to the debenture holders in priority to the mortgagee. Younger, J., who tried the action, dismissed the action, holding that the company's interest in the fixtures as mortgagor continued only so long as it had an interest in the term, and ceased on a sale by the mortgagee; that the right which the mortgage carried to remove the fixtures did not render it obnoxious to the Bills of Sales Act so as to make it void for non-registration thereunder; that the receiver was under no obligation to insist that the removal of the fixtures by the mortgagee should be delayed until the end of the term; and, lastly, that the arrangement come to between the receiver and the mortgagee was beneficial to the debenture holders, and that the mortgagee had gained no undue advantage; and the Court of Appeal (Eady, M.R., Duke, L.J., and Eve, J.) affirmed his decision. It may be observed that the case seems to some extent to have turned on the fact that the mortgage was by