

TEETZEL, J.:—The plaintiff is trustee for bondholders of the Raven Lake Portland Cement Company, hereinafter referred to as "the company," and the defendant is liquidator of that company under the Dominion Winding-up Act.

By mortgage dated the 13th September, 1904, the company duly granted, assigned, transferred, conveyed, and mortgaged to the plaintiff in trust, subject to a certain other mortgage, all and singular its undertakings then made or in course of construction or thereafter to be constructed, together with all the properties, real or personal, tolls, incomes, and sources of money, rights, privileges, and franchises, owned, held, or enjoyed by it, then or at any time prior to the full payment of the bonds thereby secured, to secure payment of the bonds mentioned in the mortgage, amounting to \$50,000, and interest. The lands are specifically set out in a schedule attached to the mortgage. The mortgage also purports to cover "all machinery of every nature and kind, including all tools and implements used in connection therewith, which are now or which may hereafter during the currency of this mortgage be brought upon the said lands or into any of the buildings thereon, including all machinery used or to be used in the manufacture of cement and plant and tools connected therewith. . . . The dredge at Raven Lake, the machinery, tools, etc., to be deemed fixtures for the purpose of this mortgage, whether the same shall be actually affixed to the said lands or buildings or not."

The 23rd and 24th clauses read as follows: "And it is further hereby declared and agreed, for the purpose of this mortgage security, that all machinery, plant, and personal property of the company are to be considered fixtures to the realty, and it is expressly understood and agreed that this mortgage is not to be registered as a bill of sale or chattel mortgage. Provided and it is hereby declared that the company may at all times, so long as there is no default in payment of principal or interest on the said bonds or otherwise hereunder, sell and dispose of its manufactured products in the ordinary course of business free from the lien of this mortgage."

Each bond, a copy of which is set forth in the mortgage, contains this clause: "This bond is one of a series, amounting in the aggregate to \$50,000, and is secured by a mortgage, duly executed according to law, conveying to the National Trust Company Limited, as trustee, all the present and future real and personal properties, rights, franchises, and powers of the Raven Lake Portland Cement Company Limited, as by refer-