

JULY 18TH, 1902.

DIVISIONAL COURT.

STACK v. T. EATON CO.

*Fixtures—Shop Fittings—When so Annexed to Land as to Pass to Purchaser on Conveyance.*

Appeal by plaintiff from judgment of MACMAHON, J., dismissing an action brought to decide the ownership of certain shop and gas and electric light fittings which were placed by one Guinane in a building on freehold land then owned by Guinane and which the respondents, purchasers of the land, claimed as having passed to them as part of the realty by the conveyance of the land to them. The shop fittings consisted of shelving made in sections, screwed to brackets affixed to the wall of the building, readily removable without damage either to the fittings themselves or to the building; and the gas and electric fittings were also removable by unscrewing without injury to the building.

W. R. Smyth, for the appellant.

G. F. Shepley, K.C., for the respondents.

MEREDITH, C.J.—I take it to be settled law:

1. That articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as shew that they were intended to be part of the land.

2. That articles affixed to the land even slightly are to be considered part of the land unless the circumstances are such as to shew that they were intended to continue chattels.

3. That the circumstances necessary to be shewn to alter the prima facie character of the articles are circumstances which shew the degree of annexation and object of such annexation which are patent to all to see.

4. That the intention of the person affixing the article to the soil is material only so far as it can be presumed from the degree and object of the annexation.

5. That even tenants' fixtures, put in for the purposes of trade, form part of the freehold, with the right, however, to the tenant, as between him and his landlord, to bring them back to the state of chattels again by severing them from the soil, and that they pass by a conveyance of the land as part of it, subject to this right of the tenant.

I am unable to see why the shelving affixed by Guinane when he was the owner of the freehold for the purposes of