

The defendants' mortgage being in default, the defendants took possession and are now in possession of the mortgaged premises, and deny the right of the plaintiffs to enter upon the said premises or to remove the machinery therefrom.

I find that the articles in question have the name of the manufacturers, the plaintiffs, stamped or engraved thereon as required by the Act respecting Conditional Sales of Chattels, R. S. O. 1897 ch. 149, sec. 1. Section 10 of that Act was amended by 5 Edw. VII. ch. 13, sec. 14, and provides that "where any goods or chattels, which have been sold on special conditions as in section 1 of this Act mentioned, are affixed to any realty, such goods and chattels shall, notwithstanding, remain subject to such conditions as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other incumbrancer on such realty shall have the right, as against the manufacturer, bailor, or vendor of such goods or chattels, or any person claiming through or under them, to retain the said goods and chattels, upon payment of the amount due and owing thereon."

Mr. Moss contends that this section has no application where the machinery is brought on and affixed to the realty after the mortgage is registered, and, at most, that it is a bare right, and plaintiffs have no right to enter and tear down the wall and remove the machinery. He contended that *Sealey v. Caldwell*, 12 O. W. R. 245, had no application to the present case, as that case refers to a lease. He also referred to *Broom's Common Law*, 7th ed., p. 214; *Cameron v. Hunter*, 34 U. C. R. 121; *Reynolds v. Ashby & Son Limited*, [1903] 1 K. B. 87, [1904] A. C. 466; *Hobson v. Gorringe*, [1897] 1 Ch. 182; and *Ellis v. Glover & Hobson Limited*, [1908] 1 K. B. 388.

I do not think the statute as amended should receive this restricted application. The statute provides that where goods and chattels have been sold on the special conditions mentioned in sec. 1 of the Act, and are affixed to any realty, such goods and chattels shall, notwithstanding, remain subject to such conditions as fully as they were before being so affixed. The machinery in question does fall within sec. 1 of the Act, in my opinion, and is therefore subject to the conditions mentioned in the order for purchase.

What are those conditions? One of the special conditions in this case is that by the terms of the order the title