

The question to be determined, therefore, is whether the lessees, in possession under the lease made in 1904, had the right to remove the vault door which they had, as tenants under an earlier lease, supplied and placed upon the premises. I shall assume that, if still in possession under the original lease of 1890, they would have the right to remove the door, though a fixture. The right of a tenant as against his landlord to remove his trade fixtures during the term, though affixed to the freehold more firmly than was this door, is well established. I refer only to some of the more recent decisions: *Mears v. Callander*, [1901] 2 Ch. 388, citing, with full approval, *Penton v. Robart*, 2 East 88; *In re Hulse*, 74 L. J. Ch. 246; *Argles v. McMath*, 26 O. R. 224, 18 A. R. 44.

This vault door was brought upon the premises to meet the business requirements of the bank. It was hung upon the pivots that it might serve the purpose for which it was designed. Its removal entails no injury whatever to the freehold. It can, when removed, be used elsewhere just as it was used upon the premises of plaintiff. The circumstances do not indicate that the bank intended that this door should become permanently a part of the freehold. It would seem not unreasonable that, if a fixture at all, it should be deemed a tenant's trade fixture and as such removable. Such I assume it to have been.

But the authorities are uniform that tenant's fixtures are removable only during the term or some further period of possession by the tenant, during which he holds the premises under a right still to consider himself a tenant, or during what has been called an excrescence upon or an enlargement of the term.

Either in 1899 or in 1904, probably in both years, there was a surrender by the lessees of the terms then respectively about to end. During the original term the door in question, if a fixture, was part of the freehold, subject, I assume, to the tenants' right of removal: *Scarth v. Ontario Power and Flat Co.*, 24 O. R. 446, 451. That right of removal ceased with the surrender—whether by express agreement or by operation of law—of the term in respect of which it existed. Under a new lease taken by a tenant, in the absence of special agreement to the contrary, things remaining affixed to the freehold, though theretofore his removable fixtures, are demised to him as part of the premises owned by the landlord: *Sharp v. Milligan*, 23 Beav. 419; *Pronguey v.*