

J., acted as the mouth-piece of the Ontario Court of Appeal in deciding that the term "fixtures" would include the cars or rolling stock of an electric street railway, arose upon an interpleader issue between certain execution creditors, who were defendants in the foreclosure case of *Kirkpatrick v. Cornwall Electric Street Railway Co.*, and certain trustees and debenture holders, who were plaintiffs in that case (see 2 O.L.R. 113 and 119). On the interpleader issue the chief question was whether the railway company's rolling stock was liable to seizure under execution, or was protected by a mortgage made by the company of its real estate, together with all "buildings, machinery, appliances, works, and fixtures, etc., and also all rolling stock, and all other machinery, appliances, works, and fixtures, etc." to be thereafter used in connection with the railway. For the execution creditors it was contended that the rolling stock was personal property, and did not pass with the railway to the mortgagees under the mortgage. The trial judge, (Armour, C.J.) decided the interpleader issue in favour of the mortgagees, and the Court of Appeal affirmed this judgment, holding (per Osler, J.) that the rolling stock of an electric railway constitutes a "part of a great machine confined to a particular locality, for which it is specially constructed and fitted, being operated by means of a continuous current of electricity generated in part of the fixed plant in the power house, and passing through the trolley pole of the car, which is fitted to the overhead wire, through the car to the unbroken line of rails and back to the generator." Hence, "detached from the rails the rolling stock is incapable of use; and upon the principles laid down in *Place v. Fagg*, 4 M. & Ry. 277; *Fisher v. Dixon*, 12 Cl. & F. 312, and *Mather v. Fraser*, 2 K. & J. 536, such rolling stock "is to be regarded in the nature of a fixture, passing with the land over which it runs." Thus we find that instead of dealing with an "elementary" (i.e. primary, simple) principle Mr. Justice Osler is here dealing with one of the most complex and uncertain subjects that confront us in English law. In *Sheen v. Riccio*, 5 M. & W. at p. 182, so great a judge as Baron Parke professes his inability to put any nice limitation upon the meaning of the word "fixtures"