

CLUTE, J.

MARCH 22ND, 1909.

## TRIAL.

## GOLDIE &amp; McCULLOCH CO. v. TOWN OF UXBRIDGE.

*Sale of Goods — Conditional Sale — Property Remaining in Vendors — Machinery with Manufacturers' Name Stamped thereon—Conditional Sales Act—Machinery Affixed to Freehold—Rights of Mortgagees of Freehold—Construction of Statute—Registration of Mortgage before Machinery Affixed.*

Action to recover possession of certain machinery and for damages for detention.

H. E. Rose, K.C., for plaintiffs.

J. H. Moss, K.C., for defendants.

CLUTE, J.:—The plaintiffs claim certain machinery as vendors under a conditional order for sale dated 6th November, 1907, from the plaintiffs to the Palmer Piano Company. The order provides that the title to the said machinery shall not pass from the plaintiffs until the purchase price is paid. The plaintiffs prepared plans for affixing the machinery to the freehold of the Palmer Piano Company, which was done by preparing a cement bed to receive the boiler, in which four bolts were embedded and passed up through the cement, and upon which the boiler was placed and bolted down. It was further enclosed with brick and cement, and to remove the same it would be necessary to tear down a considerable part of the wall enclosing it. There is still due to the plaintiffs on the said machinery \$2,644.94, and default has been made in the payments.

The plaintiffs claim possession of the said machinery and damages for detention. The defendants claim under a mortgage dated 6th December, 1907, of the lands upon which the said machinery was affixed. The machinery was not in fact placed and annexed to the premises until February, 1908. The defendants claim that the machinery in question was affixed by the said Palmer Piano Company to the lands and premises covered by their mortgage in such a manner that the same cannot be removed from the said premises without injury to and disturbance to the said premises.