

BRITTON, J.

DECEMBER 6TH, 1902.

TRIAL.

## SCHIEDELL v. BURROWS.

*Fixtures—Machinery in Factory—Rights of Mortgagee—Intention.*

Action by plaintiff, a mortgagee, to restrain the removal of certain looms in a carpet factory at Breslau. The plaintiff had been owner of the mortgaged premises, and had used them for a shoddy mill, there being an engine, a boiler, and shafting on the property. The defendant bought the whole, giving back a mortgage in which the engine, boiler, etc., were specifically mentioned, and carried on a carpet manufacturing business, bringing in for the purpose seven looms. These were not in any way attached to the freehold, except by their own weight, but plaintiff contended that they were nevertheless part thereof by reason of their use and from defendant's intention to make them so.

BRITTON, J., held that there was no such intention on the part of defendant that the looms should be used as part of the carpet factory at Breslau as to render it necessary to use them only there. Also, that in these days, when frequent changes take place in the construction of machines, when improvements are constantly made, and at great cost, in machinery of all kinds, the inclination of the Court should be to relax, where possible, in favour of the owner of chattels, rather than carry further, decisions giving to the mortgagee or owner of the freehold machines put in for trade purposes. The result might have been different if defendant had merely purchased the property with the intention of erecting a carpet factory, and without any machinery thereon being specifically referred to.

Action dismissed with costs. Defendant to receive the \$400 paid into Court. Defendant's claim for damages by reason of injunction reserved to be tried at some future time.

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DIVISIONAL COURT.

## BEAUDRY v. GALLIEN.

*Judgment—Reference by Consent to Experts—Misunderstanding of Counsel as to Purpose of Reference—Opening up Judgment.*

Appeal by defendants from judgment of local Master at Ottawa in mechanics' lien action, tried before him, finding \$1,956 due from defendants to plaintiff. The question involved the examination of a great number of items in the