

COURT OF APPEALS IN THE LAST RESORT.

*Between*

FERDINAND BLANCKE, DAVID MULFORD  
and JAMES R. ENGLISH,

*Appellants ;*

*and*

C. B. ROGERS & Co.,

*Appellees.*

The points relied on for reversal :

1. The machinery described in the bill of complaint was permanently attached and incorporated with the real estate by John Y. Brokaw, the owner of the real estate.
2. They were adapted to the uses and purposes for which the building was erected and appropriated.
3. They were so attached for the purpose of making a permanent improvement to the real estate.
4. They had been so incorporated before the chattel mortgage of the complainants was executed.
5. After the machinery was so incorporated by the owner of the fee, the said owner mortgaged the real estate, with its appurtenances, and by virtue of said mortgage the appellants became the owners of the real estate and appurtenances.
6. That the said machinery was subject to the mortgage by which the appellants acquired title at the time the chattel mortgage was executed to the complainants, and the act of the owner in executing the chattel mortgage did not and could not sever the machinery from the real estate.

The authorities relied on are as follows :

Quinby vs. Manhattan, Cloth Paper Co., 9 C. E., Green 260, \*  
and the cases therein cited.

Hays vs. Doane, 3 Stock, 96.

Brearily vs. Cox, 4 Zab., 287.

Richardson vs. Borden, 42 Miss., 71.

Also reported in American reports, vol. 2, 597.

ALWARD & PARROT,

*Solicitors*

B. WILLIAMSON,

*of Counsel.*

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1875 No 24

DRAKE & COOK, Printers, Elizabeth, N. J.

# Court of Appeals

IN THE LAST RESORT.

*Between*

FERDINAND BLANCKE, DAVID MULFORD  
and JAMES R. ENGLISH,

*Applicants,*

*and*

C. B. ROGERS & Co.,

*Appellees.*

*On Bill to Fore-  
close.*

Joseph Alward, Solicitor of and of Counsel for the Ap-10  
pellants.

McCarter and Keen, Solicitors of and of Counsel for the  
Appellees.

IN CHANCERY OF NEW JERSEY.

To the Honorable, Abraham O. Zabriskie, Chancellor of the  
State of New Jersey:

Humbly complaining, show unto your Honor, your Orators,  
C. B. Rogers & Company, a foreign corporation, doing business

*Bill filed  
March 28*

in the City of New York, County of New York and State of New York, that on or about the tenth day of May, in the year of our Lord, one thousand eight hundred and seventy-one, John Y. Brokaw, of the City of Elizabeth, County of Union and State of New Jersey, was justly indebted to your Orators in the sum of nine hundred and sixty-one dollars and fourteen cents, and being so indebted the said John Y. Brokaw in order more effectually to secure to your Orators the said sum of nine hundred and sixty-one dollars and fourteen cents so due to them as  
 10 aforesaid, made three certain promissory notes, one of which said three promissory notes being dated March twenty-eighth, eighteen hundred and seventy-one, for four hundred dollars, payable in two months from the date thereof; another whereof being dated May tenth, eighteen hundred and seventy-one, for two hundred and seventy-nine dollars and seventy-seven cents, payable in three months from the date thereof, and the other of said three promissory notes being dated May tenth, eighteen hundred and seventy-one, for two hundred and eighty-one dollars and thirty-seven cents, payable in four months from the  
 20 date thereof, and delivered the same to your Orators.

And your Orators further show unto your honor that in order to secure the payment of the said three promissory notes, the said John Y. Brokaw made, executed and delivered unto your Orators a certain chattel mortgage, which chattel mortgage is in the words and figures following, that is to say :

“ To all to whom these Presents shall come, know ye that I, J. Y. Brokaw, doing a manufacturing business of blinds, sash, doors and mouldings at Elizabeth, N. J., party of the first part for securing the payment of the money hereinafter mentioned,  
 30 and in consideration of the sum of one dollar to myself duly paid by C. B. Rogers & Co., doing business at 109 Liberty street, New York, parties of the second part at or before the ensembling and delivery of these presents the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do grant, bargain and sell unto the said party of the second part, one certain moulding machine, one certain planer and matcher, value \$961  $\frac{14}{100}$  mentioned in the schedule ‘A’ hereunto annexed and now in the possession of the party of the first part. To have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be unto the

said parties of the second part, their successors and assigns forever. And I, the said party of the first part, for myself, my heirs, executors and administrators, all and singular of the said goods and chattels above bargained and sold unto the said parties of the second part, their successors and assigns against myself, the said party of the first part, and against all and every person or persons whomsoever shall and will warrant and forever defend. Upon condition that if I, the said party of the first part shall and do well and truly pay unto the said parties of the second part, their successors or assigns, one note dated March 10 28th, 1871, for two months, for four hundred dollars (\$400), one note dated May 10th, 1871, for three months, for two hundred and seventy-nine dollars and seventy-seven cents ( $\$279 \frac{77}{100}$ ) one note dated May 10th, 1871, for four months, for two hundred and eighty-one dollars and thirty-seven cents ( $\$281 \frac{37}{100}$ ), then these presents shall be void.

But in case a sale or disposal or attempt to sell the said machinery as mentioned in schedule marked (A) and hereunto annexed, the party of the second part may take the said machines or any part thereof in their own possession. And I, the said 20 party of the first part for myself, my executors, administrators and assigns do covenant and agree to and with the said parties of the second part, their successors and assigns that in case default shall be made in the payment of the said sum above mentioned, or if the party of the first part does not at his own expense keep the said machines mentioned in schedule (A) hereunto annexed fully and well insured, then it shall and may be lawful for, and I, the said party of the first part do hereby authorize and empower the said parties of the second part their successors and assigns, with the aid and assistance of any per- 30 son or persons to enter the dwelling house, store and other premises and such other place or places as the said goods or chattels are or may be placed, and take and convey away the said goods and chattels and to sell and dispose of the same for the best price they can obtain, and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, and rendering the overplus if any unto myself or to my executors, administrators or assigns, and until default be made in the payment of the sum of money as aforesaid to remain and continue in the quiet and peaceable possession of 40

the said goods and chattels and the full and free enjoyment of the same.

In witness whereof I, the said party of the first part have hereunto set my hand and seal the tenth day of May, one thousand eight hundred and seventy-one.

Sealed and delivered in the }  
 presence of } JOHN Y. BROKAW, [L. S.]  
 H. A. MEETLE, JR."

*Schedule A.*

- 10 One (1) No. 1 four (4) sided inside moulding machine by C. B. Rogers & Co., of Norwich, Conn. One (1) No. 4 Clipper planer and matcher made by C. B. Rogers & Co., Norwich, Conn.

*Witness,*

H. A. MEETLE, JR.,

JOHN Y. BROKAW.

And your Orators further show unto your honor that the said chattel mortgage was duly filed in the office of the Clerk of the County of Union, on the twelfth day of May, eighteen hundred and seventy-one, and that a true copy thereof was on the eighth day of May, eighteen hundred and seventy-two, filed in the said  
 20 Clerk's office together with a statement exhibiting the interest of the mortgages in the property described in said chattel mortgage, the said statement being that your Orators claim consisted of the said three promissory notes made by said John Y. Brokaw in favor of your Orators as aforesaid.

And your Orators further show that the said John Y. Brokaw and Jane M., his wife, on or about the thirty-first day of July, eighteen hundred and seventy-one, by deed of assignment dated on that day, conveyed all his estate, both real and personal to one David Mulford, as assignee, in trust for the benefit  
 30 of the creditors of the said John Y. Brokaw, which said deed of assignment was duly recorded in the Clerk's office of Union County, in Book No. 58, of Deeds, for said county, on page 451, on the day the same bears date; but your Orators insist that said assignment is subsequent in priority to the lien of your Orators said mortgage.

And your Orators further show that on the fourth day of August, eighteen hundred and seventy-one, Daniel A. Van Horn and Jeremiah Fitzpatrick recovered a judgment against said John Y. Brokaw, in the Union County Circuit Court, for the sum of two hundred and thirty-five dollars and thirty-five cents, or some other sum by virtue of which said judgment the said Daniel A. Van Horn and Jeremiah Fitzpatrick claim to have some interest in said mortgaged property ; but your Orators charge that said judgment was obtained subsequent to the execution, delivery and filing of your Orators said mortgage, and if a 10  
lien at all on said mortgaged property, the same is subsequent to the lien of your Orators said mortgage.

And your Orators further show that on the fifth day of August, eighteen hundred and seventy-one, Louis Macabe and Charles Spittlehouse recovered a judgment against said John Y. Brokaw in the Union County Circuit Court, for two hundred and thirty-five dollars and thirty-eight cents, or some such sum by virtue whereof the said Louis Mecabe and Charles Spittlehouse claim to have some interest in said mortgaged property ; but your Orators charge that the said judgment was obtained 20  
after the execution, delivery and filing of your Orators said mortgage, and if a lien at all on said mortgaged property, the same is subsequent in priority to the mortgage of your Orators.

And your Orators further show unto your honor that on the twelfth day of August, eighteen hundred and seventy-one, Ayers Coddington, Charles Tappin and Daniel I. Somers recovered a judgment against the said John Y. Brokaw for two hundred and forty-one dollars and thirty-six cents, or some such sum in the Union County Circuit Court; but your Orators insist that the said judgment was obtained after the execution, delivery and 30  
filing of your Orators said mortgage, and if a lien at all on said mortgaged property, the same is subsequent in priority to the mortgage of your Orators.

And your Orators further show unto your honor that on the thirtieth day of August, eighteen hundred and seventy-one, Ayers Coddington and Sylvanus Coddington recovered a judgment against the said John Y. Brokaw for one hundred and thirty-seven dollars and sixty-six cents in the Union County Circuit Court; but your Orators insist that the said judgment if a lien at all on said mortgaged property is subsequent to the lien of 40

your Orators said mortgage thereon, the said judgment having been recovered subsequent to the execution, delivery and filing of your Orators said mortgage.

And your Orators further show unto your honor that on or about the fourth day of August, eighteen hundred and seventy-one, Lewis D. Cook, Gideon R. Giles and Benjamin E. Young obtained a judgment in the Supreme Court of New Jersey, against the said John Y. Brokaw for nine hundred and nine dollars and sixteen cents; but your Orators insist that the said  
10 judgment was obtained after the execution, delivery and filing of the mortgage of your Orators, and if a lien at all on said mortgaged property, the same is subsequent in priority to the mortgage of your Orators.

And your Orators further show unto your honor that on or about the twenty-second day of August, eighteen hundred and seventy-one, Lewis I. Lyons and Owen McCabe recovered a judgment against the said John Y. Brokaw and one Samuel Barber in the New Jersey Supreme Court for fourteen hundred and ninety-seven dollars and twenty-three cents; but your  
20 Orators insist that the said judgment was obtained subsequent to the execution, delivery and filing of the mortgage of your Orators, and if a lien at all on said mortgaged property, the same is subsequent in priority to the mortgage of your Orators.

And your Orators further show unto your honor that they have been informed and believe it to be true that one Ferdinand Blancke and James R. English, Esquire, claim to have some interest in and to the said chattels so mortgaged as aforesaid, to your Orators by the said John Y. Brokaw in the manner as  
30 hereinafter stated; but your Orators charge and insist that whatever interest they may have in and to the same, that interest is subsequent and subject to that of your Orators.

And your Orators further show unto your honor that they have been informed and believe it to be true that on or about the fourth day of April, eighteen hundred and seventy-two, Joseph M. Osborn, Sheriff of the County of Union, did convey unto the said Ferdinand Blancke certain premises situate in the said city of Elizabeth, by virtue of a certain decree in the court of Chancery of the State wherein Caroline C. Shirley and William F. Shirley, her husband, were complainants, and John Y. Brokaw and Jane M., his wife and others, were defendants, the

deed for which conveyance is recorded in the office of the Clerk of Union County, in Book 70, of Deeds, for said county, page 16, &c.; by virtue of which said conveyance the said Ferdinand Blancke and the said James R. English, Esquire, (who is associated with him in business, as your Orators have been informed) claim to have some interest in said chattels for the reason that the said chattels are situate on the said premises so conveyed by the said Joseph M. Osborn, Sheriff, as aforesaid to said Ferdinand Blancke, and that the titles to said chattels passed to said Blancke upon the execution of the said conveyance, whereas 10 your Orators charge that said chattels are entirely separate and distinct from the freehold, and are in no wise connected with the same.

And your Orators further show unto your honor that they have been informed that the said David Mulford (lately one of the Judges of the Inferior Court of Common Pleas for the said County of Union) is likewise interested with said Blancke and English in the alleged ownership of said chattels; but your Orators insist that any such ownership would be illegal and void, by reason of his acting for the benefit of all the creditors of 20 said John Y. Brokaw as assignee of said Brokaw's estate.

And your Orators further show unto your honor that the whole amount of principal due by the said three promissory notes still remains due and unpaid, together with interest since the dates thereof, respectively at the rates of seven per cent. per annum, by reason whereof said notes have become forfeited, and said chattel mortgage has become absolute *in* your Orators.

And your Orators further show unto your honor that the said John Y. Brokaw or the said David Mulford still remains in possession and enjoyment of said mortgaged property, and that 30 they refuse and neglect to pay unto your Orators any part of the principal or interest due them on their said debt.

And your Orators further show unto your honor that the said personal property so mortgaged to your Orators is a very slender and scanty security for the money due on said three promissory notes, and said security is daily becoming less and less adequate to secure the debts intended to be secured thereby.

Your Orators therefore respectfully solicit the aid of this honorable Court in the collection of the amount so due to your Orators and to that end pray that the said defendants John Y. 40

Brokaw, David Mulford, Daniel A. Van Horn, Jeremiah Fitzpatrick, Louis Mecabe, Charles Spittlehouse, Ayres Coddington, Charles Tappin, Daniel I. Somers and Sylvanus Coddington, Lewis D. Cook, Gideon R. Giles, Benjamin E. Young, Lewis J. Lyons and Owen McCabe, Ferdinand Blancke and James R. English may upon their corporal oaths, true, full and perfect answers make to all and singular the charges above set forth fully and particularly according to the best of their knowledge, information and belief as if the same were here again repeated,

10 and they interrogated thereto, and that the said defendants or some or one of them may be decreed to pay to your Orators the principal sum above mentioned until the arrears of interest now due or hereafter to become due or payable thereon, together with all costs and charges in this behalf expended by a day to be appointed by this honorable Court, and in default thereof that all and singular the property mortgaged as aforesaid may by the order and decree of this court be sold, and out of the money arising from the sale thereof your Orators may be paid the full amount due on said promissory notes and chattel mortgage and

20 all interest money due or to become due thereon, together with all costs and charges by your Orators in this behalf sustained, and if the proceeds of such sale shall not be sufficient to pay the same, that then the said John Y. Brokaw be decreed by this honorable Court to pay the deficiency thereof to your Orators, and that your Orators may have such other and further relief in the premises as may be agreeable to equity and good conscience.

And that the States writ of subpoena issuing out of and under the seal of this honorable Court may be directed to the said

30 John Y. Brokaw, David Mulford, Daniel A. Van Horn, Jeremiah Fitzpatrick, Louis Mecabe, Charles Spittlehouse, Ayres Coddington, Charles Tappin, Daniel I. Somers, Sylvanus Coddington, Lewis D. Cook, Gideon R. Giles, Benjamin E. Young, Lewis J. Lyons and Owen McCabe, Ferdinand Blancke and James R. English therein and thereby commanding them on a certain day and under a certain penalty therein to be specified to be and appear before your honor in this honorable Court, then and there to answer all and singular the premises contained in this your Orators bill of Complaint, and to stand to abide by

such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

And your Orators as in duty bound will ever pray, &c.

McCARTER & KEEN,

*Sols. for and of Counsel with the Compl'ts.*

A true copy :

H. S. LITTLE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

*Between*

C. B. ROGERS & COMPANY,

*Complainant ;*

*and*

JOHN Y. BROKAW, et als..

*Defendants.*

10

The joint and several answers of Ferdinand Blancke, David Mulford and James R. English, three of the defendants to the Bill of Complaint of C. B. Rogers and Company, complainant.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complain-20 ant's said Bill of Complaint contained for answer thereto, or unto so much and such parts thereof as these defendants are advised is material, they answer and say that they admit that a chattel mortgage purporting to be made by John Y. Brokaw to C. B. Rogers and Company, doing business at 109 Liberty street, New York, upon one certain moulding machine and one certain planer, was filed in the Clerk's office of the County of Union, to secure the payment of certain promissory notes as in said Bill of Complaint set forth. But whether the said John Y. Brokaw was indebted to the complainant at the time said mortgage was 30 executed, or whether the same has been paid these defendants

have no means of knowing, and therefore neither admit or deny leaving the complainant to prove the same in such manner as they may be advised is necessary.

And these defendants further admit, that the said John Y. Brokaw and wife made an assignment for the benefit of his creditors as in the Bill of Complaint set forth.

And these defendants further answering say, that they are informed and believe to be true that several judgments were obtained against the said John Y. Brokaw, the records of the  
10 Court will show whether the same are correctly stated in the complainant's Bill of Complaint, and to said records these defendants beg leave to refer.

And these defendants further answering say, that on the seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy, the said John Y. Brokaw became indebted to one Samuel S. Wood, Jr., in the sum of ten thousand dollars, and to secure the payment of the same the said John Y. Brokaw, and Jane M., his wife, executed a mortgage on certain premises situate in the city of Elizabeth, which mortgage, after  
20 being duly acknowledged by the said John Y. Brokaw and wife, was recorded in the Clerk's office of the County of Union, on the 14th day of June, 1870, in Book 14 of Mortgages for Union County, page 174.

That upon the lands thus mortgaged at the time of executing said mortgage was erected a brick factory, having been erected and built for the purpose of manufacturing sash, blinds, doors, mouldings, and for doing all manner of scroll sawing, planing and turning, that within said factory is contained one clipper  
30 planer and matcher, similar to the one described in complainant's Bill of Complaint, and these defendants believe is the one referred to in said Bill of Complaint.

And these defendants further answering say, that said clipper planer and matcher is permanently attached to the real estate described in said mortgaged premises, and that it no longer partakes of the nature of personal property, but have become a part of the real estate, and that the same was incorporated with the real estate by the said John Y. Brokaw who was then the owner of the fee of said real estate, and that he attached said  
40 machinery to said real estate for the purpose of making a permanent improvement to the real estate.

These defendants further answering say, that the said John Y. Brokaw was engaged in manufacturing on the lands described in said mortgage to Wood before the present building was erected; that the building then standing on said lands were destroyed by fire, and thereupon the said John Y. Brokaw before executing said mortgage to Wood erected new buildings on said lands, and that he erected said buildings for the purpose of carrying on said business, and to recover the machinery placed therein; that the machinery placed therein was intended for a permanent improvement to the real estate as much as the building covering the same. 10

And these defendants further answering say, that said mortgage was on the 28th day of June, 1870, assigned to Caroline C. Shirley by the said Samuel Wood, Jr., and by the said Caroline C. Shirley foreclosed; that on or about the 7th day of April, 1872, the said mortgaged premises were publicly and in due form of law at the Court House, in the city of Elizabeth, sold by the Sheriff of the County of Union, by virtue of a certain decree in the Court of Chancery of this State, wherein 20 Caroline C. Shirley and her husband were complainants. and John Y. Brokaw and Jane M., his wife, and others were defendants, to pay the amount due on said mortgage, together with the costs of Court, and that the defendant Ferdinand Blancke paid for said premises the sum of \$            the deed of said conveyance was duly recorded as in the complainant's bill of complaint set forth, and is now in the possession of the said Ferdinand Blancke ready to be produced as this Court may direct.

And these defendants further answering say, that at the time 30 of said conveyance by said Sheriff the machinery described in the complainant's bill of complaint was permanently attached to and incorporated with the real estate described in said mortgage, and passed by virtue of the deed above mentioned to the said Ferdinand Blancke.

And these defendants further answering say, that they had no actual knowledge of the complainant's mortgage until long after the conveyance by the Sheriff to the said Blancke.

And these defendants further answering, admit that the said James R. English and David Mulford are interested at the 40

present time with the said Ferdinand Blancke in the said premises.

But they further say, they acquired said interest from the said Ferdinand Blancke after the same was conveyed to him by the Sheriff as aforesaid.

And that all the ownership that is claimed by these defendants to the property in controversy was acquired in the first instance by the Sheriff's deed above mentioned to Ferdinand Blancke, and all the interest that the said James R. English and David  
10 Mulford have in and to said property they acquired of the said Ferdinand Blancke after he received his title from the Sheriff as aforesaid.

And these defendants further answering say, that at the time the said mortgaged premises were sold to Ferdinand Blancke, the machinery in question was part of the real estate and passed to the said Ferdinand Blancke by the Sheriff's deed, and these defendants expressly deny that the machinery in controversy are separate and distinct from the freehold as in such bill of complaint charged.

20 And these defendants deny all unlawful combination and confederacy in said bill charged without that; that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain and prove as this honorable Court shall direct, and humbly pray to be herein dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

30

JOSEPH ALWARD,

*Sol'r.*

NEW JERSEY, ss.

David Mulford and James R. English, two of the above named defendants, each being duly sworn on their respective oaths, say: That the matters and things set forth in the above answer, so far as relate to their own acts respectively, are true,

and so far as relates to the acts of others he believes them to be true.

Sworn and subscribed before me, } JAMES R. ENGLISH,  
this 30th day of June, 1873. } DAVID MULFORD.

N. J. C. ENGLISH,  
M. C. C.

NEW JERSEY, ss.

Ferdinand Blancke, one of the above named defendants, being duly sworn, says: That the matters and things set forth in the above answer, so far as they relate to his own acts, are true; 10 and so far as relates to the acts of others he believes them to be true.

Sworn and subscribed before me, } FERD. BLANCKE.  
July 1st, 1873. }

JOSEPH JAMES,  
*Commissioner of Deeds.*

A true copy:

H. S. LITTLE, *Clerk.*

VICE-CHANCELLOR'S CHAMBERS, }  
SATURDAY, June 20, 1874. }

*Between*

C. B. ROGERS & Co.,

*Complainants;*

*and*

JOHN Y. BROKAW,

*Defendant.*

*On Bill  
to  
Foreclose.*

Before Hon. Amzi Dodd, Vice-Chancellor.

10 McCarter & Keen for Complainants.

Mr. Alward for Defendant.

Complainants counsel opened and read from mortgage, stating the different notes, their amount and dates as follows:

Note for \$400, March 28, 1871, for 3 months.  
" " \$279.72, May 10, " " 4 "  
" " \$231.31, " " " " " "

and stated that the above notes were given in part payment in the purchase of the machinery sold by the complainants to John Y. Brokaw.

20 Complainants counsel then offered in evidence mortgage and foreclosure from Brokaw to C. B. Rogers & Co., May 10, 1871. Certified copy of the same filed according to the provisions of the act, within 30 days next preceding the filing of the original mortgage, dated May 8th, 1872; and also another copy, dated May 3rd, 1873; and also another copy dated May 25th, 1874.

Defendant's counsel then read answer.

Plaintiff's counsel then called Henry A. Meetele, sworn:

Q. You are in the employ of the complainant, are you not?

A. Yes, sir.

Q. Are you acquainted with the signature of John Y. Brokaw, the defendant in this suit?

A. Yes, sir.

Q. Here are three promissory notes purporting to be signed by him; are those his signatures? [Handing witness the three notes hereafter offered in evidence.]

A. Yes, sir.

Q. These three notes are the same as mentioned in the mortgage, for the payment of which the mortgage was given? 10

A. Yes, sir.

Q. Have any of these notes, or any part of them, ever been paid?

A. No, sir.

Complainants counsel offered the three notes in evidence, (amounts and dates before stated.)

Q. When were these machines put in this building?

A. The planer and matcher were put in about the 29th of December, 1869, and the moulding machine was put in in January 19th, 1870. 20

Q. Whereabouts were they put in? in Elizabeth were they not?

A. Yes, sir.

Q. At whose place?

A. John Y. Brokaw's.

Q. What kind of a building is that?

A. It is a brick building, and this machinery was put in on the first floor; the machines stood parallel with Grand street, and they were put in on the first floor.

Q. On what does it rest? 30

A. On nothing but the common floor.

Q. Is there nothing between the floor and the machines?

A. Nothing at all.

Q. How were they put down on the floor; were they bolted down?

A. The planer and matcher were put down by common lag bolts, screwed into the foot of the machine.

By Defendant's Counsel :

Q. What time are you testifying to ?

A. I am testifying now to the time when I observed particularly the machine being screwed down to the floor, in May of this year.

*Further Examined.*

Q. How were they when they were put in in December, 1869, and January, 1870 ?

A. I did not observe then how they were put in,—whether  
10 they were screwed down at all or not.

Q. Do you know how they are put in ?

A. They were merely resting on the wooden floor.

Q. That is both shortly after they were put in, and between that time and this ?

A. Yes, sir.

Q. You say they rest on the wooden floor ?

A. Yes, sir.

Q. How are they connected with the engine ?

A. There is a main line of shafting and a counter shaft to  
20 each machine attached to the machine, with one stand on the outside of the shaft for a tight and loose belt, and they are connected by belts from the main shafting to the counter shaft; there is no particular gearing between that machine and the engine, the only connection is by belts; the belting is from the main shafting to the counter shaft.

Q. Were these notes given for the payment of these two machines that were put in ?

A. Yes, sir.

Q. What is the weight of these two machines ?

30 A. One is two tons, and the other is thirty-six hundred pounds—  
—not quite.

Q. What was said at the time of the giving of the mortgage by Brokaw to C. B. Rogers & Co., as to the machine—as to security ?

Defendants Counsel objected “ was that question competent ? ”

Complainants Counsel "merely desired the witness to speak as to what was said at the time—as to whether this was personal property or not, and as to the security, and what was said by the defendant, Brokaw, to the witness at the time of the giving of the mortgage."

The Vice-Chancellor allowed question.

Q. What conversation was had between you and Brokaw at the time of giving these notes and the mortgage?

A. The conversation that passed was in relation to these notes—we wanted security on the notes, and Mr. Brokaw admitted 10 that the real estate mortgage was on his property; but nothing was on his personal property.

Q. Was anything on the personal property?

A. No, sir—nothing at all. I examined the record myself and found it so, and we finally concluded to take the chattel mortgage on the machines themselves, which we considered personal property;

*Cross-examined.*

Q. Had C. B. Rogers sold Mr. Brokaw any machinery besides that? 20

A. Yes, sir.

Q. How much in amount?

A. I think there was one more machine sold beside, of about \$300.

Q. What was the price of these machines?

A. The price of these machines together was about \$1700.

By the Vice-Chancellor:

Q. These machines in question?

A. Yes, sir.

*Further Cross-examined.*

30

Q. Then altogether you sold Mr. Brokaw \$2,000 worth of machinery?

A. Yes, sir.

Q. And these notes were the only portions that had not been paid?

A. Yes, sir.

Q. You shipped these machines from New York?

A. Yes, sir.

Q. Did you not place them in the building yourself?

A. No, sir—we shipped them right from New York.

Q. Mr. Brokaw placed them in the building himself?

A. I suppose so.

10 Q. When was the first you saw them there?

A. It was in 1870—after January—I think it was, if I remember right; but I don't remember exactly; I used to go out there quite often to take our customers to see the machines running.

Q. When did you see them after that?

A. Well, I have seen them probably a dozen times.

Q. Did you see them every year, from January, 1870 to May, 1874?

A. To the best of my recollection, yes, sir; every year.

20 Q. Whereabouts did you see one machine screwed down?

A. The one that I observed was screwed right down to the floor; screwed down, of course, at the foot of the machines.

Q. What kind of a screw do you mean?

A. A common lag bolt.

Q. What is that?

A. I mean a screw that has no nut bolted on the end of it, just the same as the screws that you use in these desks.

By the Vice Chancellor:

Q. How large a screw?

30 A. Well, screws of that kind would not be over  $\frac{5}{8}$ ths—to answer the question of the length of it—it is how long Mr. Brokaw's floor is, and I don't know what that is.

Q. Do you mean  $\frac{5}{8}$ ths in diameter?

A. Yes, sir.

*Further Cross-examined.*

Q. How do you know the other was not screwed in the same manner?

A. Well, when I examined it, particularly in this last May, I took out my knife and cleaned out the dirt, and found no hole in the floor where the screw should go.

Q. How many places are there for screws?

A. On the planer and matcher there is two for each stand, and four for the machines, if I remember correctly, that is six; and on the moulding machines there is eight, I think.

Q. And which one was it you said was screwed? 10

A. The planer and matcher I found was screwed.

Q. Is that a good representation of Mr. Brokaw's shop (showing witness a diagram)—now, which is the planer and matcher?

A. (Witness explained diagram to Counsel.)

Complainants Counsel also called John Y. Brokaw; sworn:

Q. You gave these notes and the mortgage spoken of here?

A. Yes, sir.

Q. And they were upon the two machines that have been also spoken of?

A. Yes, sir. 20

Q. Tell the Court the position in which they were placed when they were first put in your building by you?

By the Vice Chancellor:

Mr. Brokaw, in making your answer to that question, make it so far as you can explanatory in itself, without reference to this paper, in order that the stenographer may take it down as far as possible, and the notes show by what he takes down what the fact was.

*Re-examined.*

A. (Witness:) The position when they put them in was about 30 the same as it is at the present time, that is, about 35 feet from the engine one of the machines stood, and the other about 40 feet connected with the last shaft, there is an intermediate shaft between the engine and the last shaft, and from the last shaft

there is a connection run down to the small shaft in the planer.

Q. Upon what did the machines rest when they were put in?

A. They rested on the floor.

Q. Was there anything between the floor and the machines?

A. No, sir.

Q. There is nothing between the machines and the floor?

A. No, sir.

By the Vice Chancellor :

Q. Is there any masonry in the flooring to support the  
10 machines?

A. No, sir.

*Further Examined.*

Q. It merely rested on the wooden floor?

A. On the wooden floor.

Q. How long did it take to put them in, to bring them from  
the street and lay them where they were put on the floor?

A. About a quarter of a day.

Q. How long did it take to get them out of the wagon?

A. I suppose half an hour.

20 Q. Were they both bolted down or merely one of them?

A. One of them.

Q. That was the planer and matcher, was it not?

A. Yes, sir.

Q. Was the moulding machine ever bolted down, or screwed  
down at all?

A. That never was bolted down.

Q. What security did you intend to afford the complainants  
when you gave this mortgage? was it intended to be a lien upon  
the property to the exclusion of any other lien?

30 Defendant's Counsel objected. The Vice-Chancellor admitted the question, subject to the objection.

Q. What was your intention in giving this security?

A. To be a lien upon the machines.

Q. What was your intention in placing the machinery there;

was it your intention that it should form part of the land, the real estate?

A. No, sir.

Q. You looked upon it as having the right to remove it without prejudice to the mortgage on the real estate?

Defendant's Counsel objected.

A. Yes, sir.

Q. What was your intention in placing that machinery there?

Defendant's Counsel objected. The Vice-Chancellor allowed the question to be asked, subject to the objection. 10

Q. Well, what was your intention in placing it there?

A. As personal property.

Q. You never bricked it in, or placed any mortar or stone round it, or embedded it in the ground?

A. No, sir.

Q. When did you make an assignment for the benefit of your creditors,—about what time?

Defendant's Counsel objected. Complainants Counsel withdrew the question.

*Cross-Examined.*

20

Q. When did you commence business in Elizabeth as a sash and blind manufacturer?

A. Fifteen years ago last April.

Q. On the same premises where this factory now stand?

A. No, sir.

Q. What time did you commence in these premises, where this factory now stands?

A. About eight years ago in the premises where this factory stands; the other factory was burned down. 30

Q. I mean on this land?

A. About eight years ago, I think.

Q. You say it was burned out after you started?

A. Yes, sir.

Q. Then you erected the brick factory on the same premises, did you?

A. Yes, sir.

Q. And that is the same factory now spoken of?

A. Yes, sir; on the same premises, on the same site.

Q. To carry on the same business you had before?

A. Yes, sir.

Q. What was the purpose for which you erected this brick factory?

10 A. For the sash, blind, and door business.

Q. In carrying on that business, are such machines as have been spoken of here, the planer and matcher, and moulder necessary?

A. Yes, sir.

Q. Could you carry on business without them?

A. No, sir; we could carry on a certain branch of it.

Q. Well, the business you carried on made it necessary to have them?

A. Yes, sir.

Q. Then in building this factory you intended it to receive just such machines as these, did you not.

20 A. Yes, sir.

Q. Were those among the first machines that were placed in the building?

A. I think there was one machine in the building before these present ones; it was there some three or four weeks perhaps.

Q. These were among the first?

A. Yes, sir.

Q. And they have been there ever since, have they not?

A. Yes, sir.

Q. You stated these machines stood on the floor; how thick is the floor?

30 A. Two inches; that is what is called a 2-inch floor.

Q. And all the machines in that building were placed in the same manner, on the floor?

A. Yes, sir.

Q. Well then, was the floor made thick enough; was its strength sufficient to bear up the machinery placed on it?

A. Yes, sir.

Q. There are no machines that are bricked in there, are there?

A. No, sir.

Q. You said that the planer was screwed to the floor, did you not?

A. The planer has an extra shaft on the end of it, and it is screwed down with lag bolts.

Q. How was the moulder?

A. I think that was not screwed.

10

Q. How is it secured to the floor?

A. The weight of it keeps it there as it is heavy; perhaps at one time it may have been screwed; just a screw or two put in it, but I don't recollect about that.

Q. Well, why do you say there might have been a screw in there at some time; do you think there was?

A. The machines sometimes will move round unless we did put a screw in.

Q. Do you think there was a screw in this at one time?

A. I am under that impression; the men sometimes take out the screws to move another length of belting.

Q. What makes you think it is not screwed now?

A. What makes me think so is, that the last time I was in there, seeing the men move the machine to get a length of belt on; it was not fastened at that time.

Q. How long ago was that?

A. Two years ago.

Q. Have you not at any time said you considered these machines were part of the real estate?

A. No, sir; I have not.

Q. You never did?

30

A. I have not.

Q. Since the foreclosure of the "Ward" mortgage, have you not said that they were secured by that mortgage?

A. No, sir; I have not.

Q. Did you never tell James R. English that?

A. No, sir.

Q. Did you never tell James R. English that you considered they were permanent improvements to the real estate?

A. No, sir; I don't think Mr. English ever had any conversation with me on the subject.

Q. When you bought these machines, what did you give Mr. C. B. Rogers & Co. for them?

A. I gave them my notes.

Q. Were they these notes mentioned in this mortgage?

A. Yes, sir.

10 By Complainants Counsel:

Q. Is that not only part of them?

A. Yes, sir; part of them; the first notes I gave were paid, and these are only the balance.

*Further Cross-examined.*

Q. Did you give him notes for the whole amount that you bought?

A. Yes, sir.

Q. Did you not pay any cash?

A. I gave him notes.

20 Q. How much did you pay for these two machines?

A. I think one was \$1,000 and the other \$700.

Q. Did you give him one note for \$1,700.

A. No, sir; I gave him three or four notes.

Q. Have those notes all been taken up?

A. All except these; I think the bill was somewhere in the neighborhood of \$2,100.

Q. At the time you bought those machines did you give either one of these notes? [Handing witness the notes offered in evidence, dated March and May, 1871.]

30 A. No; I think these notes were not given at the time we bought the machinery.

Q. How soon after you bought the machinery, did you give the notes for the machinery?

A. I think about one month; I gave him perhaps one or two notes at the time.

Q. What became of those notes?

A. They have been paid.

Q. You say the notes that you gave at the time you bought the machinery have all been taken up by you ?

A. Yes, sir ; except these.

Q. These were not given by you at that time ?

A. No, sir ; they were given in payment of the old notes ; they are the renewal ; I did not give the notes all at one time ; I gave them at different times.

Q. Did you buy any other machinery of C. B. Rogers & Co. besides these ? 10

A. Yes, sir.

Q. What else ?

A. The moulding machine.

Q. How much was that ?

A. \$275 I think.

Q. Was that before or after you bought these two machines ?

A. At the same time ; I think that machine was put in first if I recollect right.

Q. Well, you have no means of knowing whether these notes were for that machine or for these two in question have you ? 20

A. No, sir.

By the Vice-Chancellor:

Q. What was the price of this other machine ?

A. \$275.

Q. Is that the only machine for which you paid \$275, and the only machine besides these two others that you bought of him ?

A. Yes, sir.

*Further Cross-examined.*

Q. You were the owner of the fee at the time you put these 30 machines in ?

A. Yes, sir.

Q. This mortgage to Ward was put on the premises after you put these machines there ?

A. Yes, sir.

*Re-Examined (Direct.)*

Q. Was not the note which you gave in payment of that third machine, the moulding machine, paid when it became dne?

A. Yes, sir.

Q. What kind of business were you in? you were first in the sash, blind and door business, and afterwards you went into the moulding business.

A. Yes, sir; after I was burned out I went into the mould-  
10 ing business.

Q. Were these machines that were put in here proper for the sash and blind business or were they intended rather for the moulding and planing business?

A. They were intended rather for the planing and moulding business.

Q. Is there a steam engine and boiler in your place?

A. Yes, sir.

Q. How is it connected with the floor?

A. The engine is bolted down on the brick foundation.

20 Q. How far does that rest in the ground?

A. About four feet, I think.

Q. And that is connected with the machines through belting and shafting?

A. Yes, sir; there are two shafts between the engine and the machines.

By the Vice Chancellor:

Q. These machines are worked by means of belts attached to the shafting?

A. Yes, sir; connecting the machines with the engine and  
30 boiler.

*Further Re-examined. (Direct.)*

Q. Were these two machines heavy or light for the sash and blind business?

A. Well, one of them was a heavy machine and the other one was light.

*Re-cross-examined.*

Q. When you built this brick building did you not intend to not only to do the sash and blind business, but also the planing and moulding too?

A. Yes, sir.

Complainant's Counsel then offered in evidence the mortgage, bond, assignment and Sheriff's Deed.

From Joseph M. Osborn, Sheriff, to Ferdinand Blancke and James R. English, dated April 4th, 1872.

Also bond and mortgage from John Y. Brokaw to Samuel 10  
S. Ward, Jr., dated May 19th, 1870.

Also assignment from Samuel S. Ward, Jr., to Caroline C. Shirley, wife of William F. Shirley, dated June 28th, 1870.

Complainant rests.

Defendants Counsel offered in evidence transcript of foreclosure of mortgage; also two certified copies of deeds to John Y. Brokaw, of these same mortgaged premises, showing that he was the owner of the fee.

Complainants Counsel—Well, sir, we admit that.

Defendants Counsel then called John W. Clark; sworn: 20

Q. You reside in Elizabeth?

A. Yes, sir.

Q. What is your business?

A. Well, it is scroll work, scroll sawing.

Q. Are you familiar with the factory—the brick factory on Grand street—belonging to John Y. Brokaw?

A. Yes, sir.

Q. Do you remember when it was built?

A. Well, I think it was 1869, late in 1869 or 1870.

Q. Had you anything to do with the construction of the 30  
building?

A. Yes, sir.

Q. What?

A. I was superintendent for him.

Q. Well, give the Court a description of the building?

A. (Witness went to diagram and gave answer in connection with various points on it.) *This* is about the shape of it. It is a brick building, 12 inch walls, 3 stories high, the dimensions are about 48 feet one way and 63 feet the other. *This* is the engine room, it runs off an incline, it is an 8 foot addition.

10 Q. Is there a smoke stack to it?

A. Yes, sir.

Q. That is at the extreme corner of this incline you speak of?

A. Yes, sir.

Q. Is the main building of the same height?

A. Yes, sir.

Q. Where is the boiler?

A. The boiler is *here* in the addition which is the boiler and engine room; there is a shaft runs the whole length of the 20 building on the first floor.

Q. What does that shaft do?

A. That shaft? the rest of the machinery is attached to it, it supplies the whole of the machinery of the building, and that is driven from the engine by the shafting, connected by belting.

Q. What length about is the shafting?

A. That, I think, is about 16 feet from the main shafting of the engine to the main shafting of the building; it has a wide belt of 20 inches.

30 Q. Whereabouts are these two machines which have been spoken of here?

A. They are situated on the first floor, what I should call a kind of in the rear.

Q. How far from the engine?

A. 30 or 35 feet.

Q. Have they any machines as near the engine as those in the building?

A. No, sir; those are the nighest on the first floor.

Q. Have you often looked at the machines ?

A. Oh, yes, sir.

Q. Did you help put them there ?

A. Well, part of them I did, the men, of course, was there to help, as they were heavy.

Q. How were they fastened ?

A. They were bolted.

Q. Both of them ?

A. Well, I think they have been bolted.

Q. Do you know at all, did you ever see them bolted ? 10

A. I am sure *this* one is bolted ; this is the big one, the planer.

Q. You say the planer was bolted—in what manner ?

A. It has an iron foot to it, and the bolts run through the iron feet into the two inch floor.

Q. What do you say about the other ?

A. I think that has been bolted, but it has been moved and the screws taken out.

Q. How long ago do you think it was bolted ?

A. Nearly a year, or more. 20

Q. Can you state anything that brings it to your mind that they were bolted ?

A. No more than that they generally put bolts in them ; but I don't recollect particularly.

Q. Do you know how many machines there are in that building ?

A. There are several.

Q. On what floor ?

A. On the same floor, and there are several on the second floor, and some on the third floor. 30

Q. Are you familiar with machinery of that kind ?

A. Well, I have been there amongst it for several years.

Q. And have you been in any other building beside this ?

A. Only in this building, and the other that was burned.

Q. Have you ever been in other buildings that used this kind of machinery ?

A. Yes, sir.

Q. Are you familiar with the manner in which this machinery is usually placed in such buildings for manufacturing these kind of things?

A. No, sir.

Q. Have you not seen it in other buildings?

A. Yes, sir.

Q. Did you ever see it masoned in in other buildings?

A. No, sir.

10 Q. Do you know whether it is customary to mason it in?

A. I think not.

Q. Do you think it is customary to build a brick foundation for it to stand on?

A. I don't think it is.

Q. It is usually placed on the floor?

A. Yes, sir.

Q. What keeps it in its place?

A. Well, the weight of the machine will generally keep it to its place.

20 Q. Is the weight of the machine heavy enough to keep it to its place?

A. And then they generally put in one or two bolts to steady it.

Q. What was that building built for?

A. For its present purpose, sash, blinds, mouldings, &c.

Q. Can the moulding and planing business be carried on without a "planer" and "moulder" in it?

A. I think not.

Q. These machines then are necessary for carrying on the business?

30 A. We should require them.

Q. And they were necessary for carrying on the business that has always been carried on in that building since it has been built?

A. Yes, sir.

Q. Did you work for John Y. Brokaw before this place was built?

A. Yes, sir.

Q. What business did he carry on then?

A. The same business

Q. He had established that business at that time ?

A. Yes, sir.

Q. And this building was erected to carry on the same business that he had in the former building ?

A. Yes, sir.

Q. You have been in that factory ever since it was built ?

A. Yes, sir ; I drew the drawing for it, and then went to work and helped put it up.

Q. Does that plan give a correct representation of the 10 building—the first floor ?

A. Yes, sir.

Defendants Counsel then offered the diagram in evidence.

*Cross-examined.*

Q. Did you draw *that* machine yourself?

A. No, sir.

Q. Which do you say was bolted down ?

A. The planer.

Q. You say your impression is that the other one was bolted down at some time ?

20

A. I think it was.

Q. What makes you think so ; did you ever see it ?

A. I think I did.

Q. When was that ?

A. When they first put it in.

Q. Did you put the bolts in yourself ?

A. No, sir.

Q. You say after these machines were put in, holes were made and bolts put into the floor ?

A. Yes, sir.

30

Q. These holes were in the foot of the machines ?

A. Yes, sir.

Q. By whom were these holes drilled in—by you—or were they already in when they came ?

A. That was not done by us.

Q. You cannot say positively that you ever saw bolts in these other machines ?

A. No, sir.

Q. Have you examined them lately ?

A. No, sir.

Q. When were you in there last ?

A. This morning.

Q. How were they then ?

A. On the floor.

10 Q. Were they resting still on the floor as you know ?

A. Yes, sir.

Q. How do these machines compare in weight with those up stairs ?

A. They are heavier.

Q. How much heavier ?

A. Three or four times.

Q. What kind of machines are they up stairs ?

A. They have another moulding machine.

Q. What is its weight ?

20 A. I could not tell you.

Q. About how much ?

A. It may weigh twelve hundred, or it may not be so much; about one-third as much as this.

By the Vice-Chancellor.

Q. You say that one of those machines is bolted ?

A. Yes, sir.

Q. What do you mean by being bolted ?

A. In the foot of the machines there is a hole made, and the bolts run down into the 2-inch floor; these bolts have a large thread on them, and are what we call "wood cutters."

30 Q. What you call a bolt then, is of the same nature as a screw, except that the thread of it is bigger ?

A. Yes, sir.

Q. Is there anything on the end of it, a nut or fastening underneath the floor ?

A. No, sir; not at all.

Q. It is put in the floor, and you cannot get under the floor to fasten it?

A. No, sir.

Q. How is the bolt or screw put in the floor,—is it by means of a wrench, or is it drilled down?

A. By a wrench.

Q. In both cases, either a bolt or a screw, it would be turned in and brought out by means of a wrench operating on the head of it?

A. Yes, sir.

10

Q. So that if you wished to remove the machines from the place where they now stand, to a different place on the same floor, you would have to unscrew the bolt, or screw and push the machine along and fasten it again in the same way?

A. Yes, sir.

Q. What is the size of those bolts?

A. Well, I suppose for  $\frac{5}{8}$  to  $\frac{1}{2}$  an inch.

Q. From four-eighths to five-eighths?

A. Yes, sir.

Q. Are the screws about the same size?

20

A. Well, about the same.

Q. The machines you say stand on feet?

A. Yes, sir.

Q. And in these feet the holes are made for the purpose of putting the bolt or screw through into the floor?

A. Yes, sir.

*Further Cross-Examined.*

Q. What is the object of putting the bolts in the floor through the feet of these machines?

A. To keep them steady; but the machines would stay there without any. 30

Q. Then the only purpose for which they would be put in, would be to keep them steady?

A. I should think so.

By the Vice-Chancellor:

Q. You think they would stand without the bolts?

A. Yes, sir ; that is heavy enough to keep its position.

Q. Then the bolt or screw you consider as an additional means of securing them?

A. Yes, sir.

*Further Cross-Examined.*

Q. Would not a heavy one stand better without the bolts than a lighter one will ?

A. Yes, sir.

Q. And in the lighter one they must put bolts, you know?

10 A. In the heavy one there is bolts.

Q. And in the lighter ?

A. There is none at present, but I think there has been one in.

*Re-Examined (Direct.)*

Q. You never worked on this machine yourself, did you?

A. No, sir.

Complainants Counsel also called George McCall, sworn :

Q. What is your business ?

A. I run the planer.

20 Q. What planer ?

A. In the factory.

Q. This planer that has been spoken of ?

A. Yes, sir.

Q. How long have you worked on it ?

A. Two years.

Q. Then you are familiar with their location ?

A. Yes, sir.

Q. In that location properly shown on that paper ? [Handing witness the diagram.]

30 A. Yes, sir ; that's right.

Q. Do you know whether these machines are fastened in any way ?

A. They are both fastened.

Q. To what ?

A. To the floor.

Q. Are you sure of that?

A. Sure of it? Yes, sir.

Q. How long have they been fastened—were they fastened when they were first put there?

A. Yes, sir.

Q. How many evolutions do those machines make a minute?

A. I suppose the big one makes about 3,000 a minute.

Q. How many does the little one? 10

A. The little one, I guess, makes about the same.

Q. How long have you worked on that class of machines?

A. Over five years.

Q. As an expert, give your opinion as to whether these machines would stand in their places without being fastened?

A. I don't think they would.

Q. The fastening is necessary for the use of them?

A. Yes, sir.

Q. Now Mr. McCall you have heard the testimony of the other witnesses as to whether these machines are fastened. Are you sure these machines are fastened? 20

A. I am sure of it.

Q. What makes you sure?

A. They have to be fastened to keep the shaft from springing.

Q. How do these machines compare in size with other machines of that build?

A. They are a great deal heavier.

*Cross-Examined.*

Q. You say these have always been bolted down,—fastened? 30

A. Yes, sir.

Q. When did you first see them?

A. When they were first put there.

Q. In 1869 or '70?

A. Yes, sir.

Q. How are they fastened ?

A. I think they are bolted with a screw bolt.

Q. Did you see the bolts with which they are fastened ?

A. Yes, sir.

Q. Did you examine them ?

A. Yes, sir.

Q. How many evolutions do you say these machines make per minute ?

A. About 3,000.

10 Q. Do you say the machines made that ?

A. Yes ; the head of the cutter.

By the Vice-Chancellor :

Q. That is the revolving wheel ?

A. Yes, sir.

*Further Cross-Examined.*

Q. Was it the moulding machine itself, or the hanger that is fastened ?

A. The hanger.

20 Q. Then you mean the hanger is the part of the machine fastened, not the machine itself ?

A. Well, you could not run the machine without the hanger, could you ?

Q. Well, I didn't ask that.

A. Well, the hanger is fastened.

Q. What is that hanger for ?

A. (Witness went to diagram and explained the working of the hanger.)

By the Vice Chancellor :

Q. The machine stands by its own weight then ?

30 A. Yes, sir, right on the floor ; the hanger is bolted down.

*Re-examined.*

Q. The hanger is fastened to the machine ?

A. Yes, sir. (Witness continued explanation with assistance of diagram.)

*Case closed.*

IN CHANCERY OF NEW JERSEY.

C. B. ROGERS & als.,

*vs.*

JOHN Y. BROKAW et als.

*Opinion.*

Mr. Keen for Complainants.

Mr. Alward for Defendants.

*The Vice-Chancellor :*

10

The question in this case is whether two machines, one called a planer and matcher, and the other a moulder, both being in a sash and blind factory in Elizabeth, are fixtures or not ; in other words, whether they are or are not articles of a personal nature which may be removed against the will of the owner of the land.

The machines were bought by the owner of the land, John Y. Brokaw, on or about January, 1870, of the complainants, the makers of them, who took Brokaw's notes in the first instance for the price, and afterwards a chattel mortgage to secure three renewal notes amounting in all to about \$950, being the unpaid part of the original price. The complainants' suit is to foreclose this chattel mortgage. It is resisted, not by Brokaw, but by the defendants who hold title to the land through a sale by the Sheriff under foreclosure of a mortgage on the land made prior to the chattel mortgage to the complainants. The chattel mortgage to the complainants was made May 10, 1871, and describes the machines. The

mortgage that was foreclosed and under which the defendants have title, was made by Brokaw, May 19, 1870. It describes by metes, and bounds the lot of land without referring to the machinery or to the kind of business carried on in the building on the lot. The sale under the foreclosure of this mortgage was on April 4, 1872. The defendants insist that by this sale the machines as connected with and part of the realty now belong to them free and clear of the chattel mortgage.

The question of fixtures is in this case between mortgagee  
 10 and mortgagor, and in such cases the rule against the right to sever and remove is stronger than in some cases where a different relation exists, as for example between landlord and tenant. But while this is so, my opinion is, and I shall advise that the complainants here are entitled to hold their mortgage lien. Questions of fixtures have been subjects of numerous decisions in English and American Courts, and from the nature of them are often nice and difficult questions to decide. The rules governing their solution are sufficiently  
 20 expressed for present purposes in the decisions of the Courts of this State as between mortgagor and mortgagee, if the thing appertains to the real estate, is necessary for its enjoyment and is permanently attached to the freehold, it is a fixture resulting to the benefit of the mortgagee. As to the permanency, that does not depend so much upon the degree of physical force with which the thing is attached as it does upon the motive of the party attaching it. If the article is attached for temporary use with an intention of removing it, a mortgagee cannot interfere with its removal by the mortgagor. If  
 30 it is placed there for the permanent improvement of the freehold he may.

Crane vs. Brigham, 3 Stock, 29.

The true criterion of a fixture is the united application of the following requisites : 1. Actual annexation to the realty or something appurtenant thereto. 2. Application to the use or purpose to which that part of the realty with which it is connected is appropriated. 3. The *intention* of the party making the annexation to make a permanent accession to the freehold.

Brearly vs. Cox, 4, Zab. 289.

Quimby vs. Manhattan Cloth and Paper Company, 9, C. E. G., 261.

The machines in the present case were mainly of iron, are weighing about thirty-six hundred pounds, and the other about two tons. They were put directly on the floor of the factory with no other support, and driven by connections with the secondary shafting, which was connected by bands with the main shafting driven by a steam engine. Their position on the floor was changeable, as convenience might require. 10

They had holes through the soles or feet of their frames by which they could be screwed to the floor.

One of them, at least, was so screwed, but they could be easily unscrewed and moved. They could be taken in and out of the factory without difficulty and in little time. The defendant, Brokaw, testifies as to his intention in putting in the machines, and it appears now to have been to make them part of the freehold. He had been several years in the business and had other machines in his factory of a similar kind. From the facts testified to by him and which are now con-20 tradicted, I think he would have been at liberty notwithstanding the mortgage on the lot to take the machines out at his pleasure. The question how many machines of this description were needed, whether few or many, or indeed any at all, was one of convenience and business requirements which he had the option to determine.

His intention to make them personal property would not alter their legal character. This would depend on facts and not on his opinion, and in this view evidence would be inad-30 missible to show his intention. But his intention as to making them permanent or temporary annexations to the factory is a competent and material subject of proof. Movable machines like these whose number and permanency are contingent on the varying circumstances of the business, subject to its fluctuating conditions, and liable to be taken in or out, as exigencies may require, are different in nature and legal character from the steam engine, boilers, shafting and other articles secured by masonry or other substantial annexation,

designed to be permanent and indispensable to the enjoyment of the freehold. The ruling in *Crane vs. Brigham* embraces the things above mentioned, and not the ones now in dispute.

Any conclusion on the whole is, that legal rules will be best observed as well as the justice of the case best promoted by a decree as above advised.

IN CHANCERY OF NEW JERSEY.

10 *Between*  
 C. B. Rogers & Co.,  
*Complainants;*  
*and*  
 John Y. Brokaw, David Mulford, Assignee  
 of John Y. Brokaw, Daniel A. Van Horn,  
 Jeremiah Fitzpatrick, Louis Mecabe, Chas.  
 Spittlehouse, Ayers Coddington, Charles  
 Tappin, Daniel I. Somers, Sylvanus Cod-  
 dington, Lewis D. Cook, Gideon R. Giles,  
 Benjamin E. Young, Lewis J. Lyons,  
 20 Owen Mecabe, Ferdinand Blancke, and  
 James R. English, Esquire,  
*Defendants.*

*On Bill &c.*  
*Decree.*

This cause coming on to be heard before the Vice-Chancellor, by virtue of an order of the Chancellor, bearing date the tenth day of November, 1873, on bill, answer, replication and proofs, and the Vice-Chancellor having heard the arguments of Oscar Keen, of counsel with complainants, and of Joseph Alward, of counsel for the defendants, Ferdinand Blancke, David Mulford and James R. English, Esquire, (no one appealing for the other  
 30 defendants) and it appearing that process of subpoena for the appearance of all the above named defendants has been duly served upon them, and that the said defendants, except the said Ferdinand Blancke, David Mulford and James R. English, Esquire, have not filed any plea, answer or demurrer to said bill within the time limited by law, but have wholly failed and

neglected so to do; and the Vice-Chancellor having considered the arguments of said counsel respectively.

It is thereupon on this twenty-fourth day of August, in the year of our Lord, one thousand eight hundred and seventy-four, on motion of McCarter and Keen, solicitors for and of counsel with the complainants, ordered, adjudged and decreed by the Chancellor of the State of New Jersey, that the said bill be taken as confessed against the defendants, John Y. Brokaw, David Mulford, assignee of John Y. Brokaw, Daniel A. Van Horn, Jeremiah Fitzpatrick, Louis Mecabe, Charles Spittle-<sup>10</sup>house, Ayers Coddington, Charles Tappin, Daniel I. Somers, Sylvanus Coddington, Lewis D. Cook, Gideon R. Giles, Benjamin E. Young, Lewis J. Lyons and Owen Mecabe, and it is likewise further ordered, adjudged and decreed by the said Chancellor, that the complainant's mortgage is a valid lien on the property described therein, and entitled to the first enforced against the same, and that the sum of money unpaid on the three promissory notes mentioned in said bill of complaint and secured by the mortgage on the chattels therein set forth, is due and owing by the terms of said notes and mortgage, and that a<sup>20</sup> reference be made to Andrew Kirkpatrick, Esquire, one of the masters of this Court to ascertain and report the amount due to said complainants for principal and interest upon the notes held by them, and secured by said mortgage upon said chattels, and also the amounts due, if anything, upon the judgments of Daniel A. Van Horn, Jeremiah Fitzpatrick, Louis Mecabe, Charles Spittlehouse, Ayers Coddington, Charles Tappin, Daniel I. Somers, Sylvanus Coddington, Lewis D. Cook, Gideon R. Giles, Benjamin E. Young, Lewis J. Lyons and Owen Mecabe, and to report accordingly, and that the said master do make report<sup>30</sup> thereon with all convenient speed.

THEODORE RUNYON,

C.

I respectfully advise His Honor, the Chancellor, to sign the above decree.

AUGUST 24, 1874.

AMZI DODD, V. C.

A true copy:

H. S. LITTLE, *Clerk.*

## IN CHANCERY OF NEW JERSEY.

*Between*C. B. ROGERS & COMPANY,  
*Complainants ;**and*JOHN Y. BROKAW, and als.,  
*Defendants.**Replication.*

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies  
 10 of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain and sufficient in the law, to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants, without that, that any other matter or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue, all which matters and things these  
 repliants are and will be ready to aver and prove as this honorable Court shall direct, and humbly pray as in and by their  
 20 said bill they have already prayed.

McCARTER &amp; KEEN,

*Sols. for and of Counsel with the Compl'ts.*

## IN CHANCERY OF NEW JERSEY.

*Between*

C. B. ROGERS &amp; COMPANY,

*Complainants :**and*

JOHN Y. BROKAW, et ux et als.,

*Defendants.*

*On Bill, &c.  
Order referring  
cause to Vice-  
Chancellor.*

An application having been made to me, the undersigned, for an order to refer the above cause to His Honor, the Vice-Chancellor, of which application the Solicitor of the aswering 10 defendants has received due notice.

It is on this tenth day of November, A. D. 1873, on motion of McCarter & Keen, Solicitors of the complainants, ordered that the said cause be and the same is hereby referred to the Vice-Chancellor, to hear and determine the same, and to advise the Chancellor what order or decree should be made therein.

THEODORE RUNYON,

*C.*

A true copy :

H. S. LITTLE, *Clerk.*

20

## COURT OF APPEALS IN THE LAST RESORT.

<i>Between</i>		} <i>On Bill, &amp;c. Petition of Ap- peal.</i>
FERDINAND BLANCKE, DAVID MULFORD and JAMES R. ENGLISH,	<i>Applicants,</i>	
<i>and</i>		
C. B. ROGERS & Co.,	<i>Appelles.</i>	

To the Honorable Court of Appeals in the last resort in all  
 10 causes of law. The humble petition of Ferdinand Blancke,  
 David Mulford and James R. English, the appellants in the  
 above stated cause, respectfully show that your petitioners find  
 themselves aggrieved by the interventory decree made in the  
 Court of Chancery, by Theodore Runyon, Chancellor of New  
 Jersey, upon the advice of Amzi Dodd, Vice-Chancellor, bear-  
 ing date the twenty-fourth day of August, in the year of our  
 Lord, one thousand eight hundred and seventy-four, wherein the  
 said C. B. Rogers & Co., were complainants, and John Y.  
 Brokaw, your petitioners and others, were defendants in this  
 20 respect, to wit: That the said decree adjudged that the com-  
 plainants mortgage is a valid lien on the property therein de-  
 scribed and entitled to be first enforced against the same, and  
 ordered a reference to be made to one of the masters in the  
 Court of Chancery, to ascertain and report the amount due to  
 said complainants, for principal and interest upon the notes held  
 by them and secured by said mortgage upon said chattels, and  
 also the amount due, if anything, upon the judgments of Daniel  
 A. Van Horn, Charles Spittlehouse, Ayers Coddington, Charles  
 Tappin, Daniel I. Somers, Sylvanus Coddington, Lewis D.  
 30 Cook, Gideon R. Giles, Benjamin E. Young, Lewis J. Lyons  
 and Owen Mecabe.

And your petitioners humbly appeal from that part of the  
 said decree of the Chancellor, which decree as aforesaid upon

the ground that the same is erroneous, for that the said complainants mortgage is not a valid lien on the property described therein and entitled to be first enforced against the same.

Your petitioners therefore pray that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.









