1913.

Present: Pereira J.

ABEYASUNDARA *v.* HINNI HAMY.

461—C. R. Galle, 7,225.

Fixture—Wooden screen wedged in between two walls standing on its own base—Intention of owner.

The question whether an article annexed to a building is to be regarded as a fixture depends not only on the degree of annexation, but the object of annexation. Thus, a wooden screen standing on its base and only wedged in between two walls so as to be held firmly by them by lateral pressure, but intended by the owner of the building to be a permanent partition of the main hall of the building into two rooms, is a fixture that passed to the purchaser on a sale of the building.

[1] *4 N. L. R. 243.*

THE facts are set out in the judgment of the Commissioner of Requests (L. W. Schrader, Esq.):—

The screen to which the plaintiff attaches the value of Rs. 125 is a large carved jakwood partition screen, usually recognized as a fixture, being intended permanently to divide a space into rooms. It was produced in Court. It appears to have rested on feet on the ground, and been held in upright position by fitting firmly to the side walls either with or without the help of nails inserted in the wall on either side of the wood to hold the screen steady. It was therefore not a fixture in the sense of being fixed in the ground or attached to the walls. It was merely held in position between the two walls and not attached thereto or to the ground.

2. This must be deemed a fixture for the following reasons:—

(i.) It was intended as a permanent partition making two rooms of the central hall, and it contains the door of communication. It was an integral part of the building when plaintiff bought it.

(ii.) The deed contains the word "fixtures" and "buildings attached thereto." The literal translation is "the house and everything firmly held there," and of course is intended to be a paraphrase for "fixtures." If it did not apply to a screen like this, what could it apply to? It is stated to be an unusual expression, and therefore contemplates something. There is nothing for it to apply to if not the screen.....

E. W. Jayewardene, for the defendant, appellant.—The tendency of the law at present is to relax the rule of the Roman law and the Roman-Dutch law as to fixtures. The old rule *Quid quid plantatur* has been very largely modified in England to bring it into harmony with modern requirements. Otherwise a tenant will find that many things which he had brought into the house and affixed to the building in some form or other for his own convenience have become "fixtures" in the building.

[Pereira J.—In the case of a tenant there is often an absence of intention to have his things permanently affixed to the building. This is not the case with an owner.]

Counsel cited *(1901) 1 Ch. 523, at page 534.*

H. A. Jayewardene, for the plaintiff, respondent.—The defendant intended that the screen should be a permanent partition of a hall. The Commissioner has held on the facts that it was a permanent partition, and it is not open to the appellant to challenge that finding without the leave of the Commissioner. When a house is sold, all things which were fixed to such house by the vendor prior to such sale and intended to be used in respect of such house must be delivered with the house as accessories. *Voet 19, 1, 5; Brodie v. Attorney-General;*[1] *Halsbury's Laws of England, see Fixture.*

Cur. adv. vult.

[1] *(1903) 7 N. L. R. 81, at page 89.*

1913.

Abeyasundara v. Hinni Hamy

January 30, 1913. PEREIRA J.—

In this case the question is whether a certain wooden screen found in a house sold by the defendant's husband to the plaintiff is to be regarded as a movable chattel or a fixture. It is difficult to ascertain with exactitude to what extent the screen before its removal can be said to have been annexed to the house, but I gather from the Commissioner's judgment that the screen was a large, carved, partition screen intended to divide permanently the central hall of the house into two rooms. It rested on its own base, and was apparently so wedged in between two walls as to be held firm thereby by means of lateral pressure. Now, the word " fixture " has no precise legal meeting. A great deal depends upon the circumstances of each case. As to what passes to the purchaser in the case of the sale of a house, Voet says (*19, 1, 15*): " Everything is to be given which is inserted and included in the building and intended for the permanent use of the house, and as it were a part of it." As examples he mentions paintings on the plaster and marble facings, and bolts, hooks, and keys, although these are not attached to the soil, and also the covering of a well, water vessels, and leaden cisterns. He exempts from this class things which are only in the house for temporary and present use (see *Berwick's Translation, 2 ed., p. 167*).

There is little difference between the above and the English law. It has been held that the question whether the chattel of one person fixed on another's soil remains the chattel of the former depends on circumstances and the intention of the parties (*Lancaster v. Eve* [1]). The point to be considered is not only the degree of annexation, but the object of annexation (see *Cosby v. Shaw.*[2]) Thus, certain objects though firmly fixed to the edifice are not considered to be any more than movable chattel. What are known as " trade fixtures " and such chattels as are annexed for the better enjoyment of the article itself are of this class. On the other hand, an object may be but lightly annexed, but it may, nevertheless, be regarded as part of the building. Thus, statues and vases resting on their own weight in an ornamental garden, and tapestry on the walls of a room in a mansion house, have, in certain circumstances, been held to be fixtures.

In the present case the annexation, no doubt, was of a somewhat superficial character, but, obviously, the screen was intended by the owner of the house as a permanent addition to it, dividing the main hall into two rooms, and containing a door of communication between these rooms. In this view the judgment of the Commissioner is right, and I dismiss the appeal with costs.

Affirmed.

[1] *28 L. J. C. 235.*

[2] *19 L. R. Jr. 307.*