

ment of a receiver, and showing how its interests will be conserved by the court undertaking to administer the extensive and varied interests of the company, rather than leave the same to the management and control of its officers.

This is the case made by the bill, and to its consideration the court is confined. The fact of the company's insolvency is disputed; but the court is of opinion that, if its insolvency were conceded or established, it would not be sufficient to justify it in the exercise of the extraordinary power prayed for. The doctrine, as laid down by well-recognized authorities on this subject, is this:

"While insolvency of the defendant in possession, and against whom a receiver is sought, is frequently relied upon by the court as a ground of granting the relief, it is to be observed that insolvency alone will not, of itself, warrant a court in appointing a receiver. It must also appear that the plaintiff has a probable cause of action against the defendant, and that the benefit to result from his recovery will either be wholly lost, or substantially impaired, by reason of the insolvency, unless a receiver is appointed." High, Rec. p. 19, § 18.

To the same effect is the doctrine laid down in 3 Pom. Eq. Jur. § 1334; Post. Fed. Pr. p. 346, § 241. These authorities sustain the conclusion of the court in this case. The prayer for an injunction and for the appointment of a receiver is denied.

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EQUITABLE TRUST CO. *v.* CHRIST *et al.*

(Circuit Court, W. D. Michigan, S. D. March 13, 1880.)

FIXTURES—BREWERY—TUBS, VATS, AND CASKS.

Tubs, vats, and casks, which are placed in a brewery with a design of permanent use therein, and which are too large to pass out through any existing opening, are part of the realty, and not fixtures.

In Equity. On order to show cause why defendants should not be enjoined from removing certain articles from a brewery purchased by complainant.

*Mr. Ferris*, for injunction.

*Mr. Rogers*, opposed.

WITHEY, J. Complainant bid in certain real estate under foreclosure sale on which was a brewery establishment. Before the decree of foreclosure was obtained, defendant Gustav Christ executed a bill of sale to defendant Leppig of certain property as personal, and not part of the freehold or fixtures, comprising, among others, the following: Two large vats or tubs in cellar, one cask in cellar, one mash-tub, one water-tank, two fermenting tubs, one large force-pump, one copper cooler, one wooden cooler, one small force-pump, copper conductors, and a bar counter. There were other articles, but, as I regard them, they were

personal effects belonging to one of defendant Christs, or to Leppig, as the case may be, possessing none of the characteristics of fixtures, and may be regarded as not covered by the order in this case.

Where the tubs, vats, and casks are too large to pass out of the building through any opening existing, and these and the other articles I have mentioned are placed in the building with the design of permanent use therein, my opinion is that such articles are fixtures, and pass with the building to the purchaser. If articles are essential to the use for which the building was erected or designed, and are specially adapted to that place, and not as specially adapted elsewhere, they should be regarded as part of the freehold. Often a building is the mere incident for the use of machinery or utensils. The unity between machinery or other things and the building affords often a solution of the question of what passes as a fixture. *Green v. Phillips*, 26 Grat. 752. Let an order be entered to restrain the removal of the articles enumerated in this opinion.

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MCDONALD v. WHITEHURST *et al.*

(Circuit Court, E. D. Virginia. October 19, 1891.)

RIPARIAN LANDS—DEED TO HIGH-WATER MARK—WHAT PASSES.

A conveyance of riparian lands by metes and bounds, which on the river side are substantially coincident with high-water mark, carries, under Code Va. § 1339, all the right of the grantor to the strip lying between high and low water mark.

In Equity. Bill to quiet title.

*Tunstall & Thom* and *Sharp & Hughes*, for complainant.

*Walke & Old* and *Edward Spalding*, for defendants.

HUGHES, J. The complainant owns a piece of land on Elizabeth river, near Norfolk. The deed to him was a conveyance by metes and bounds, which on the river side were substantially coincident with the high-water line, one station being described as a stake at high-water mark of the Elizabeth river. Fifteen years after conveying to him, his grantors made another deed, conveying to defendants the strip of land lying between the high and low water lines of the river. The bill in this suit is brought to quiet complainant's title to this strip of land.

The general propositions may be accepted as true—*First*, that when lands are granted by metes and bounds, all the area within those bounds, and no more, passes; *second*, that fixed and permanent monuments control courses and distances where there is a discrepancy between these latter and those indicated by the monuments; *third*, that only the land described in a deed by metes and bounds can be acquired by a grantee, and not lands outside of such description, by way of appurtenance and accession. But, like all general propositions, however sound, these are