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FIXTURES — FRAUD AS BASIS OF IMPLIED CONTRACT TO RETAIN STATUS OF PERSONALTY AFTER ANNEXATION — *S*, owner of a farm upon which the defendant held a first mortgage, purchased from the plaintiff, a lumber dealer, building material for the definite purpose of constructing a substantial barn upon the farm. Plaintiff was induced to make the sale in reliance upon fraudulent representations made by *S*. After the barn was built the plaintiff discovered the fraud. He then brought suit to establish his right to remove the barn, contending that the fraud constituted an implied agreement that the building was to be personal property. *Held* that, under the circumstances, as a matter of law the barn became part of the realty and subject to the mortgage. *Botsford Lumber Co. v. State*, (Minn. 1933) 246 N. W. 902.

Prima facie all buildings belong to the owner of the land on which they stand as part of the realty.¹ However, they may retain the character of personal property by reason of an agreement, previous to the annexation to the land, between their owner and the owner of the soil.² This agreement may be either express or implied, and usually takes the form of a lease, a chattel mortgage, or a conditional sale.³ A limitation is normally placed upon the right of the parties to change the status of the property from that which the law would otherwise assign to it, *viz.*, that the property must be removable without serious damage to the land or without substantially destroying its own qualities and value.⁴ The prevailing judicial opinion gives full effect to such an agreement as against a mortgage of the realty made previous to the annexation.⁵ Inasmuch as the mortgagee has not been misled and has advanced nothing on the basis of such annexation, it is an equitable result.⁶ In the principal case there was no agreement to affect the status of the barn so the plaintiff relied upon an implied agreement. However, in the cases where the courts have upheld such an implied agreement there were circumstances indicating an intention of the parties to consider the annexed property as personalty.⁷ In the instant case there was no such inference

¹ EWELL, FIXTURES, 2d ed., 102 (1905).

² BRONSON, FIXTURES, sec. 28 (1904); *Kittelson v. Collette*, 61 N. D. 768, 240 N. W. 920 (1932); *Binkley v. Forkner*, 117 Ind. 176, 19 N. E. 753, 3 L. R. A. 33 (1889); *Commissioners of Rush County v. Stubbs*, 25 Kan. 322 (1881); *District Twp. of Corwin v. Moorehead*, 43 Iowa 466 (1876).

³ BRONSON, FIXTURES, sec. 28b (1904). For cases involving the rights of parties under conditional sale of fixtures see 13 A. L. R. 448 (1921), 23 A. L. R. 805 (1923), 73 A. L. R. 748 (1931).

⁴ EWELL, FIXTURES, 2d ed., 107 (1905). That a frame building can be moved without destruction is evidenced by its size and by the fact that it has been once removed. *Commissioners of Rust County v. Stubbs*, 25 Kan. 322 (1881). But *cf.* *Standard Oil Co. v. Braun*, 53 N. D. 104, 204 N. W. 972 (1925).

⁵ BRONSON, FIXTURES, sec. 29a (1904); *Campbell v. Roddy*, 44 N. J. Eq. 244, 14 Atl. 279 (1888); *Prudence-Bonds Corp. v. 1000 Island House Co.*, 141 Misc. 39, 252 N. Y. S. 60 (1930); *Title & Bond Guaranty Co. v. Pointer*, 243 Mich. 415, 220 N. W. 786 (1928); *Merchants Nat. Bank v. Stanton*, 55 Minn. 211, 56 N. W. 821 (1893); *Broaddus v. Smith*, 121 Ala. 335, 26 So. 34 (1899).

⁶ This case is to be distinguished from a mortgage covering after-acquired property.

⁷ *Coleman v. Stearns Mfg. Co.*, 38 Mich. 30 (1878); *Pope v. Skinkle*, 45 N. J. L. 39 (1883); *Howard v. Fessenden*, 14 Allen (96 Mass.) 124 (1867); *Merchants Nat. Bank v. Stanton*, 55 Minn. 211, 56 N. W. 821 (1893). In *Rowland v. Sworts*,

to be drawn from the facts; the evidence showed clearly that the parties intended the barn to be a permanent improvement. The plaintiff relied solely upon the presence of fraud, which in the opinion of the court was not sufficient to rebut the manifest intention of the parties.

R. P. R.

63 Hun. (N. Y.) 625, 17 N. Y. S. 399 (1892), the court refused to imply an agreement upon facts quite similar to those of the instant case.