FIXTURES—MORTGAGE—DESTRUCTION OF PROPERTY.—The plaintiff was a mortgagee of land including a sugar house with the necessary machinery and appliances. Defendant was an execution creditor of the mortgagor and seized the machinery on a fi. fa. after the destruction of the sugar house by fire, leaving the machinery in a "ruined condition, but containing much valuable metal." Plaintiff seeks to restrain the sale, claiming the property to be still covered by the mortgage. *Held,* it was severed by the fire and could be sold by the defendant. *Folse* v. *Triche* (1905), — La. —, 37 So. Rep. 875.

The property in question was conceded to have been immovable by destination under the civil law. That it would have been a fixture by adaptation in other states, see *Bond* v. *Coke,* 71 N. Car. 97; *Vorhis* v. *Freeman,* 2 W. & S. 116; *Reyman* v. *Henderson,* 98 Ky. 748; *Fairio* v. *Walker,* 1 Bailey 540; *Firth* v. *Loan & Trust Co.,* 122 Fed. 569. But in the majority of states greater weight is given to the intention of the parties and mode of annexation. 13 AM. & ENG. ENC. LAW (2nd. Ed.) 608. In *Otis* v. *May,* 30 Ill. App. 581; *Wilmarth* v. *Bancroft,* 10 Allen 348; *Goddard* v. *Bolster,* 6 Greenl. 427; *Rogers* v. *Gilinger,* 30 Pa. St. 185, and *Patton* v. *Moore,* 16 W. Va. 428, it was held that severance by act of God did not release property from the operation of a mortgage, because not done with the mortgagee's consent. In *Wadleigh* v. *Janvris,* 41 N. H. 503; *Hitchins* v. *Warner,* 5 Barb. 666, and *Hamlin* v. *Parsons,* 12 Minn. 108, fixtures severed by the mortgagor without the mortgagee's consent were held to be still a part of the realty. While in *Pope* v. *Garrard,* 39 Ga. 471, *Buckout* v. *Swift,* 27 Calo. 433, and *Gardner* v. *Finley,* 19 Barb. 317, it was held that severance by accident or act of God did change the fixture from realty to personalty. That a mortgage no longer covers buildings or machinery that have been removed by the mortgagor without the mortgagee's consent, see *Harris* v. *Bannon,* 78 Ky. 568; *Verner* v. *Betz,* 46 N. J. Eq. 256; *Davis* v. *Goodnow,* 80 Mo. 271; *Padgett* v. *Cleveland,* 33 S. Car. 339; *Insurance Co.* v. *Cronk,* 93 Mich. 49. The difference between the equitable and legal theory of mortgages has perhaps contributed to this lack of harmony among the decisions. It would seem, however, that in either case if removal would impair the security, the mortgagee should be entitled to injunction to prevent removal. *Brady* v. *Waldron,* 2 Johns. Ch. 148; *Emmons* v. *Hinderer,* 9 C. E. Gr. 39; *Verner* v. *Betz,* 46 N. J. Eq. 256.

FOREIGN CORPORATIONS—SERVICE OF SUMMONS ON OFFICER OF.—Relator applied for a writ of mandamus to compel the judge of the Second Judicial District Court of New Mexico to take cognizance of an action for damages against the Sante Fe Railroad Company and others. The company was the owner of several hundred thousand acres of land within that district, and at the commencement of the action for damages, was prosecuting in one of the counties of the district, suits involving the company's title and possession of parts of those lands. The company was organized under an Act of Congress and none of its officers were located in the territory. When served with summons, Ripley, the president of the company, was only a passenger on a railroad train passing through the territory. The defendant quashed the return of the above summons and refused to assume jurisdiction of the action. *Held,* that the service of summons upon Ripley, as president, was insufficient

as a personal service on the company of which he was president. *Territory of New Mexico ex rel Caledonian Coal Company* v. *Baker, Judge & Co.* (1905), 25 Sup. Ct. Rep. 375.

As indicated by the court the defendant company merely owned lands in New Mexico, and in no sense did business within the territory, hence the mere fact that one of the company's officers passed through the territory as a passenger on a railroad train, could not put the company itself into that territory for the purpose of a personal action against it, based on such service of summons. *Midland Pacific R. Co.* v. *McDermid,* 91 Ill. 170; *Phillips* v. *Library Co.,* 141 Pa. 462, 466. This view is generally sustained by the state and federal courts, with the exception of New York. *Pope* v. *Terre Haute Car Mfg. Co.,* 87 N. Y. 137. See also note to *Foster* v. *Lumber Co.,* 23 L. R. A. 490. Yet where a foreign corporation is plainly doing business in a state, and not merely holding property, it impliedly submits to the jurisdiction of the state courts regarding such business and may be considered as constructively present in the officer representing it in such business. *St. Clair* v. *Cox,* 106 U. S. 350, 356; *Barrow Steamship Co.* v. *Kane,* 170 U. S. 100. Some courts have held that there must be a statute providing for service of process upon an officer of a foreign corporation doing business in the state in order to give the court jurisdiction to render a personal judgment against a corporation, otherwise the consent of the corporation to such service will not be implied. *Desper* v. *Continental Water Meter Co.,* 137 Mass. 252. See also I WILGUS CORPORATIONS, 1120, note.

HIGHWAY—RIGHTS OF ABUTTING OWNER.—The Medina Quarry Co. was the owner of land in the Town of Clarendon and a highway of the town crossed this land, the land abutting on the highway for a distance of 800 feet. The Quarry Co. was the owner, in fee simple, of the land within the limits of the highway. The highway was four rods wide, was practically in the country and was not used by many people. Former owners of the land had made excavations extending a short distance into the highway and the Quarry Co. were about to place machinery and excavate within the limits of the highway for the purpose of getting at sandstone which lay some thirty feet below the surface of the highway. The entire work contemplated might, as was shown by the evidence, require seven years for its completion. The Town of Clarendon instituted proceedings to restrain the threatened interference with the highway. *Held,* that the Quarry Co. had a legal right to the stone beneath the highway and that the highway could be used by the defendant for the purpose of quarrying even though such use interfered in some degree with the travel on the highway; and that such use should be subject only to the restriction that a passageway be kept open upon the surface of the ground or by bridges of sufficient width to enable teams to pass each other thereon, and that a bond should be given to protect the town against loss growing out of injury to persons or property by reason of the interference or obstruction of the highway while the quarrying is going on, and for its restoration upon the completion of the work. *Town of Clarendon* v. *Medina Quarry Co.* (1905), — N. Y. —, 92 N. Y. Supp. 530.

It may be regarded as a settled principle that when the title to the high-