

tion. The moment the machine is installed and used in a factory it becomes a second-hand machine; and, even if the machine never left the claimants' custody and remained perfectly new, the mere lapse of time would result in depreciation.

Nor could this be regarded as a penalty. The sum was payable at the termination of the hiring contract. If the hiring terminated by bankruptcy, the amount was payable at an earlier date; but it was always a sum to be paid. There was no unfairness in this stipulation.

Some suggestion was made that this stipulation was a fraud upon the bankruptcy laws. This was clearly not brought within the authorities. It was not a larger sum payable in the event of bankruptcy for the purpose of obtaining some advantage over other creditors, but it was a sum which the company undertook to pay quite irrespective of bankruptcy, the payment being accelerated in the event of bankruptcy.

The appeal should be allowed with costs.

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FORBES v. DAVISON—RIDDELL, J., IN CHAMBERS—OCT. 4.

*Discovery—Production of Documents—Affidavit on Production—Right to Contradict.*—Appeal by the defendant from an order of the Master in Chambers requiring the defendant to make a better affidavit on production. In the defendant's affidavit, he undertook to produce certain entries in a diary, swearing that he had read every entry carefully, and that none of the other entries referred to the matters in issue. The Master in Chambers ordered him to produce the whole diary for inspection. RIDDELL, J., said that the Rules of Practice do not now permit a cross-examination on an affidavit on production; and what was desired here was in effect a contradiction of the affidavit, which should not have been ordered. Appeal allowed; costs here and below to the defendant in any event. T. R. Ferguson, K.C., for the defendant. M. L. Gordon, for the plaintiff.

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REX v. PYBURN—RIDDELL, J., IN CHAMBERS—OCT. 4.

*Criminal Law—Rape—Bail.*—An application for bail in the case of a charge of rape. RIDDELL, J., said that the charge was a peculiarly atrocious one; and there was no reason, in his view, why bail should be allowed—the prisoner could be tried in a few weeks. Application refused. B. H. Symmes, for the prisoner. Edward Bayly, K.C., for the Crown.