

scionable, as the lessee would have to pay for the misuse or negligence of another—the former lessee. But, looking at the facts, it appeared quite proper to hold the company so bound. The former lessee was one Durnford, and on the 12th February, 1912, he agreed with two others to turn the concern into an incorporated company, in which each of them was to put in \$6,000 capital. Durnford was to make up an account of assets and liabilities, and the assets were to be assigned to the company, and the company was to pay all liabilities. It was recited that large orders were on hand to be filled by the 1st April, and the letters of incorporation issued in that month. The company undertook to pay two items, amounting to \$307, but it was ruled (rightly enough) that the new company was not bound by this pre-incorporation private arrangement. It might well be assumed that the company, by its constituent members, knew the condition and state of repair of the plant for which new leases were given by the new company, and that it was contemplated that the tenancy of the new concern should be as if it were a continuance of the old business, and the new company undertook, on getting the 20 years' leases, to answer for what would be needed to put the machines in good shape for a new tenant, even though some of the waste and user might have been in the time of Durnford's lease. This was the tenour of the engagement, and no case was made to alter, add to, or diminish the effect of the language of the lease.

The evidence, though meagre, was enough to confirm the verified account of the accountant and warrant the allowance of \$675, if not \$692, as Middleton, J., put it.

II. As to the claim for "deteriorations" etc., the Master held that, when the machines were put in good repair, there could not be a claim for deterioration. He put it that the need for repairs arose from deterioration, and, repairs having been made, the deteriorations ceased to exist.

The common phrase in leases, "to keep in good repair, reasonable wear and tear excepted," implies that there is a process of deterioration going on in spite of repair.

There is a recognisable loss in value of machinery owing to the result of ordinary "wear and tear:" e.g., invisible destruction of surface and of parts from friction or exposure or lapse of time, not susceptible of repair, but diminishing the value of the plant. It is the usual course of accountants, no matter how well the repair is maintained, to write off something on account of this depreciation of value. The parties had agreed that \$100 should