

in the lease, may be ascertained by the Local Master, and the latter item should be credited on the amount payable by the defendant. I am not obliged to give double value, and I do not do so, as I cannot hold in this case that the defendant was "conscious that he had no right to retain possession:" *Swinfen v. Bacon*, 6 H. & N. 846; and see the view of the learned County Court Judge on the application before him.

There will be a reference to the Local Master for the purposes I have indicated, if the parties cannot agree on the amount.

The defendant should pay the costs of the action and of his counterclaim.

The defendant can have a stay of 20 days, which stay should (and if I had the power I would so direct), on the defendant filing with the Local Master an undertaking to pay, pending any appeal, the weekly amount fixed in the order of the Divisional Court dated the 3rd day of October, 1912, on the terms stated therein, and so long as he does so pay, include a stay of the injunction granted.

KELLY, J.

JANUARY 24TH, 1913.

INDEPENDENT CASH MUTUAL FIRE INSURANCE CO. v. WINTERBORN.

Principal and Agent—Agent of Insurance Company—Breach of Duty—Negligence—Interim Fire Insurance Receipt—Issue of—Failure to Communicate to Insurance Company—Liability—Damages.

Action against a former agent of the plaintiffs to recover the sum of \$660.64 and interest, in the circumstances stated below.

E. G. Porter, K.C., and W. Carnew, for the plaintiffs.
T. A. O'Rourke, for the defendant.

KELLY, J.:—The head-office of the plaintiff company is in Toronto. The defendant is an insurance agent residing in Trenton. At the time of the trial, he had twelve years' experience as such agent. In May, 1909, he was appointed by the plaintiffs then agent at Trenton; and . . . they then forwarded to him supplies such as forms, stationery, etc., and also an agency agreement in duplicate, one copy of which was to be signed by