

transferee of judgment debtor. *J. S. Denison*, for transferee, contra. *C. A. Masten* for debtor. Held, that if debt or liability were incurred prior to transfer in question, order for examination will go; but if subsequent, application refused with costs: *Rule 928*, and *Blakeley v. Blaase*, 12 D. R. 565.

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Re Brower and Coughell.—Before *Armour, C.J.*—The 29th April. — Arbitration — Setting aside award—Time within which application to be made.—Judgment on motion to set aside award under an agreement providing that submission should be made a rule of the Queen's Bench Division of High Court without notice. The award was made on 29th January, 1896, and published 30th January, 1896, and notice of motion to set it aside was served on 17th April, 1896. The learned Chief Justice is of opinion that the objection that the application is too late as not being within the time formerly constituting Hilary term and before the last day thereof must prevail. Prior to 52 Vic., ch. 13, amending R. S. O. ch. 53, it is quite clear that application would have to be made before the last day of term next after publication of award, and it is difficult to say what is the proper construction of the amending statute: see *Re Prittie and City of Toronto*, 19 A. R. 503; *Baldwin v. Walsh*, 20 O. R. 511; and *Garson v. North Bay*, 16 P. R. 179. Section 6 of the amending Act has not, however, in his opinion, the effect of extending the time. Motion dismissed, but owing to the circumstances of the case, without costs. *T. W. Crothers* (St. Thomas), for mo-

tion. *Moss, Q.C.*, and *J. A. McLean* (St. Thomas), for *Brower*.

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Fatching v. Smith.—Before *Meredith, C.J.*, *Rose* and *MacMahon, JJ.*—30th April.—Landlord and tenant—Covenant not to sub-let without leave—Measure of damages for so doing.—*T. T. Macbeth* (London), for defendant, appealed from judgment of *Boyd, C.*, in favour of plaintiff. The defendant was lessee of plaintiff on a five years' lease at a rent of \$1,800 a year, payable quarterly in advance, and containing a covenant against assignment without leave. On 13th April, 1895, defendant assigned without leave to *Martin*, and plaintiff re-entered and re-let to a third party on 6th May, 1895. Counsel contended that the measure of damages to which the plaintiff was entitled was not, as found by the trial Judge, the amount of rent from 16th April to date of re-letting on May 6th, but the difference in pecuniary responsibility of lessee and his assignee: *Williams v. Earle*, K. R. 3 O. B. 739. *W. M. Douglas*, for plaintiff, contra. Appeal allowed with costs, and upon payment of costs, and plaintiff filing affidavit making prima facie case for reference as to damages, a reference is directed to local Master at London, at risk of plaintiff as to costs thereof. Affidavit to be submitted to Court before order goes.

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Boulton v. Gzowski.—Before *Meredith, J.*—30th April.—Judgment in action tried without a jury at Toronto.—Action by *Alfred Boulton* to recover from *Casimir S. Gzowski* the sum of \$2,125 and interest, the plaintiff having been compelled to pay