Lawson's right to claim a renewal agreement from defendant Thomas Crawford, and also as to costs.

The motion was heard by Moss, C.J.O., Osler, Garrow, Maclaren, and Meredith, JJ.A.

W. M. Douglas, K.C., for defendant Lawson.

J. B. Holden, for plaintiffs.

R. McKay, for defendant John McLeod.

W. N. Ferguson, for defendant Crawford.

Moss, C.J.O.:—I. Where in an action the plaintiff obtains an interlocutory injunction on the usual undertaking as to damages, and the injunction is afterwards dissolved or the action is dismissed at the trial, there is no absolute rule as to the time within which an application should be made for a reference as to the damages, if any, the defendant has sustained. But it is good practice to make it either at the time the injunction is dissolved or at the trial: Kerr on Injunctions, 4th ed., p. 592, and cases cited; Holmested & Langton, 3rd ed., pp. 94, 95, and cases cited.

Here no application was made at the trial, but if it had been made it would not have been successful, for the trial Judge did not dissolve the injunction.

As the result of the appeal is to dissolve the injunction, it is now proper for defendant Lawson to apply to this Court, and this Court may, if the case is a proper one, direct the inquiry in the usual form.

There seems no good reason why this should not be done. The proper form of reference seems to be, whether defendant Lawson sustained any, and what damages, by reason of the orders of 20th and 27th July, 1905, having been made, which plaintiffs ought to pay according to the undertakings contained in the orders.

The inquiry ought not to be confined to the first order owing to the slip or omission in the notice of motion.

II. There can now be no alteration of the record by the introduction of further evidence. If it be the case that the question of a new agreement between defendants Lawson and Thomas Crawford was not in issue, or if the conclusions of fact upon that question on the record as it now stands be erroneous, it is open to defendant to point that out in his