

disposition of these costs. It is not to be assumed, even now, that the plaintiffs will make an improper or unreasonable use of their rights on the reference, or that any attempt at such a course will not be checked or prevented by the Master or Referee.

The only order we make is, that the costs of this application be costs in the action to the plaintiffs.

The certificate will be settled in accordance with the memorandum of judgment in the Registrar's office.

GARROW, MACLAREN, and MAGEE, JJ.A., concurred.

MEREDITH, J.A.:—The difficulty that I find in acceding to the present application is as to the power of this Court to grant it.

No motion was made to the Divisional Court to vary the judgment in respect of the costs of the reference; the motion of the present applicant was only to reverse the judgment at the trial, and dismiss the action. That motion was dismissed; and, upon a cross-motion, greater relief was given to the now respondents than had been given to them at the trial.

Then this applicant appealed to this Court; but not in any manner in respect of the costs of the reference. He again sought a dismissal of the action, adding only an alternative claim for, in effect, a restoration of the judgment at the trial; and that alternative claim was allowed; but this motion is for something quite different; something not before, at any time, asked.

His position, on coming into this Court, is made very plain in the following words taken from his reasons for the appeal: "The appellant seeks to have the judgment of the Divisional Court reversed, and the action dismissed with costs, or, in the alternative, to have it declared that the appellant is entitled to a lien upon the assets in his hands to the extent of the value of the security (book-debts) held by the Merchants Bank at the time the claim of the bank was paid by the advance made by the appellant to the company."

Without exceeding the power of the Courts, I can see no way of giving effect to the application; the trial Judge is *functus officio*, the formal judgment at the trial having been long since entered up; the same reason, as well as the reason that no such motion was made to it, applies to the Divisional Court; and, for the double reason that no such appeal was made to that Court, or to this Court, there seems to me to be no jurisdiction here.

I would make no order.

*No order except that costs of the motion be costs to the plaintiffs in the action.*