

WEEKLY COURT.

TORONTO GENERAL TRUSTS CORPORATION v.
CENTRAL ONTARIO R. W. CO.

Railway—Mortgage on Undertaking—Bonds—Interest Coupons—Arrears—Real Property Limitation Act—Application of.

Appeal by defendants Blackstock and Weddell from a certificate of a local Master shewing his finding that defendant S. J. Ritchie is entitled to more than six years' arrears of interest on bonds as against the lands of defendant railway company.

G. T. Blackstock, K. C., and T. P. Galt for appellants.

J. H. Moss, for defendant Ritchie.

D. L. McCarthy, for plaintiffs.

BOYD, C.—The provisions of R. S. O. 1897, ch. 133, secs. 17 and 24, are not applicable to the case of coupons for the payment of interest on railway mortgage bonds which are secured by mortgage deeds of trust. The land contemplated by the statute is a very different thing from the railway undertaking upon which the interest is secured. That undertaking is an integral, indivisible property consisting of land, chattels, and franchises, which for the satisfaction of creditors or bondholders must be dealt with or sold in its entirety: *Redfield v. Corporation of Wickham*, 13 App. Cas. 467, 476-7. The remedy sought is not by way of action or distress as specified in sec. 17, but is claimed under special provisions which pertain to this railway. Default has been made in the payment of the principal money of the bonds, and the plaintiffs as trustees have proceeded under the 3rd provision of the statutory mortgage to enforce payment of the principal and interest unpaid thereon. All the bondholders are subject to and bound by the terms of this instrument, and the proceeding is for the common benefit of all. The very trust which is to be observed in the case of default is that the trustees are to take possession by a receiver, which has been done, and then to proceed to realize by sale, as has been determined in this case. The extended directions given in the 2nd provision of the mortgage, when default has been made in payment of the interest, provide for the payment of all due and unpaid upon the bonds. That is also the necessary import of the 3rd provision, and it is repugnant to any idea that only six years' interest