

which they should have been handed over. The reference was had to the Master in Ordinary, who made his report in which he found the value of the bonds to have been 27 cents on the dollar, and the amount therefore due to Ray in person to be \$4,725, and to him as executor of Wild, \$2,160. An appeal was taken by defendants Middleton and Conmee to a Divisional Court, which appeal was, together with the plaintiff's cross appeal, dismissed. The appeal to this Court was taken upon the same grounds as that to the Divisional Court, namely, that the Master in making his computation had proceeded upon an incorrect principle by averaging the prices obtained at different sales of bonds, and this without taking into consideration the number sold at each sale, and that the answers of Conmee on his examination for discovery in an action between other parties, and on a different subject matter, had been improperly admitted to shew the value of the bonds.

The plaintiff had a cross-appeal on the ground that sufficient weight had not been given to evidence shewing that the bonds were more valuable than the Master had found.

The appeal was heard by MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.

Wellington Francis and J. H. Moss, for the appellants.
J. R. Roaf, for plaintiff.

OSLER, J.A.—I am of opinion that the Master's finding or assessment of the value of the bonds which the principal defendants should have delivered to the plaintiff at the date mentioned in the judgment at the trial ought not to be disturbed. I see no safe ground on which we can certainly hold that their value was not, at those dates, at least that which the Master has found it to be, or that it ought to be measured or ascertained then in the light of sales made years afterwards, when, in consequence of unexpected conditions coming into existence, the property of the company whose bonds were the subject of the contract between the parties became depreciated in value and the railway a non-paying concern. I think it is not unreasonable to look at the defendant Conmee's contemporary opinion of the value of the bonds, making every allowance for too sanguine an outlook, and it is perfectly manifest that he would not have parted with them at the times I have mentioned at the rate the Master has fixed.

I have read the cases of *Peek v. Derry*, 37 Ch. D. 541, 14 App. Cas. 337, *Twycross v. Grant*, 2 C. P. D. 489, and other cases of a cognate character, but I do not understand