

as to the counterclaim, and there should be judgment on it for defendants for \$291.90 with costs.

Blake, Lash, & Cassels, Toronto, solicitors for plaintiff.
Scott & Scott, Toronto, solicitors for defendants.

APRIL 18TH, 1902.

DIVISIONAL COURT.

KNICKERBOCKER TRUST CO. OF NEW YORK v.
BROCKVILLE, WESTPORT, AND SAULT
STE. MARIE R. W. CO.

*Railways—Bonds—Inquiry as to When Held as Collateral Security—
Judgment—Reference—Duty of Master.*

Appeal by one Hervey, a creditor, from order of FERGUSON, J., affirming report of Master at Brockville.

W. E. Raney and J. A. Hutcheson, Brockville, for Hervey.

J. H. Moss, for plaintiffs.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The appeal should be allowed and the matter referred back to the Master to take the accounts and make the inquiries directed by the judgment, the 11th paragraph of which is certainly wide enough to cover the claims of the persons who are creditors in respect of the bonds of the railway company, as well as those of persons who have merely advanced money upon its bonds as pledgees of them. The inquiry thus directed is necessary in order that the position of the company may be ascertained. Its position is not ascertained merely by stating that bonds are outstanding to a fixed amount, unless that amount correctly represents the amounts for which the bonds are held. It was stated at Bar and not disputed, that the bonds have been issued to parties as security for debts less than the face value of the bonds so issued, but the Master has refused to take evidence of the true amount of the debt, and in so doing has erred, and the fact that further directions are reserved is no reason for not doing so.