THE MASTER:—The note is admitted. The defences alleged are two. The first is that defendant gave collaterals which have not been fully and truly accounted for.

This would not entitle him to any greater relief than a judgment of reference to ascertain what exactly is due on the note in question.

The other defence is as follows, if I rightly understand the argument of defendant's counsel.

The bank, it is said, have no authority to do a savings bank business. This, it is argued, has the effect of locking up the circulation and preventing debtors from getting money to pay their liabilities. Even if such business is ultra vires, it does not appear how this can be any defence, unless a defendant could shew that he had funds in the savings bank which he was prevented by the rules from applying on the debt due by him to the bank. Nothing of the sort is even suggested here. It will be time enough to consider the question when any bank takes such a very unlikely position.

It must be left to a higher authority to give effect to such a defence if it is right to do so.

Something of this nature was set up in the recent case of Canada Permanent Mortgage Corporation v. Briggs, 7 O. W. R. 443. It did not however receive any consideration either at the trial or by the Divisional Court.

If defendant desires, he can have a judgment of reference. If not, the usual order will be made.

OCTOBER 19TH, 1906.

DIVISIONAL COURT.

TORONTO R. W. CO. v. CITY OF TORONTO.

Municipal Corporations — Expropriation of Land—Property of Street Railway Company Designed for Car Barn—Action to Restrain Council from Passing By-law—Declaratory Judgment—Refusal to Pronounce—Discretion—Appeal.

Appeal by plaintiffs from judgment of MEREDITH, C.J., ante 78.