

for mileage and for percentage upon gross receipts, in so far as they affected the priority of the city corporation as against the bondholders. There was no present issue between the city corporation and the bondholders, and there was no question as to the railway company's obligation to discharge its liabilities to both the city corporation and the bondholders. Notwithstanding that the question of priority had not been raised either by the city corporation or by the bondholders, the railway company claimed to be entitled to submit the question of priority to the Court.

Rule 604 provides that, "when the rights of any person depend upon the construction of any deed, will, or other instrument, he may apply by originating motion, upon notice to all persons concerned, to have his rights declared and determined."

The notice of motion set out several questions which the Court was asked to decide, but each involved the question of priority as between the city corporation and the bondholders. Counsel for the city corporation and for the bondholders disclaimed any desire at the present moment to have the question decided; and, so far as the learned Judge could see, they were the only persons interested in its determination. The railway company, as the debtor, had to some extent an interest in that question; but Rule 604 was not intended to apply to such a case. What the Rule provides for is the submission of a question of construction in order that the rights of the person making the application, not those of some other person, may be declared and determined. The learned Judge was at a loss to see what "rights" of the railway company were in any way affected by the question of priority. If there were any such, they could arise only in some remote and incidental way. The questions submitted to the Court involved, in the most direct and vital manner, the rights of the city corporation and of the bondholders as between themselves, which they expressed no desire to have determined. If any rights of the railway company were involved, they must be merely incidental to the larger question. Rule 604 was not intended for any such purpose as that proposed here.

There was a good deal of argument as to the Court's power to make a declaratory order upon a motion of this sort; but the decision must be rested upon the simple ground that no right of the railway company was invaded or threatened or required some immediate remedy or relief which justified any such motion as this. The result would have been the same if the matter had been the subject of an action.

*Motion dismissed with costs.*