It was contended that the order of Middleton, J., was made without jurisdiction and was therefore of no validity.

The Rules in force in 1911 as to originating notices were Rules 938 to 943 of the Rules of 1897. Service of a notice of motion was not essential to give jurisdiction to deal with an application as upon originating notice under these Rules. The thing to be done was to bring the motion before a competent tribunal, and the notice of motion was only the form by which that was to be accomplished. If the person who, under the Rule, is the person to be served, is willing to waive that formality and to go before the Court in order that the motion may be made and dealt with, that course may properly be taken; and that was what was done in this case.

The parties were properly before the Court, and it was for the Court to determine whether any other person ought to be served, and, if so, who. What was done was, though in form a direction that one of the municipal corporations should represent the others, in reality a determination by the Judge that the corporation which was before him sufficiently represented the interests of all the corporations—as the cases of all of them were identical—and in effect a determination by the Court that it was not necessary that any other than the persons before him should be served.

In the absence of evidence to the contrary, it should be presumed that the fact that the Corporation of the Township of Ashfield had been appointed to represent the other corporations was communicated to these corporations; and, even if the order were to be considered as having been made as to them ex parte, they might have applied under Rule 358 of 1897 to rescind it. Rule 193 of 1897, as to the representative capacity of trustees, should also be referred to.

There was no doubt that the matter in controversy came within clause (*h*) of Rule 938. The only right which the municipal corporations had against the respondent was as cestuis que trust under the mortgage-deed. There was no contractual relation between them and the respondent; any contract there was, was with the railway company; but, when the bonds or the proceeds of them were handed over to the respondent, they became impressed with the trust which was declared by the mortgage-deed as to the application of them by the respondent.

The order of Middleton, J., was, therefore, a valid order and was binding on all the corporations; and, as it was the authority for what the respondent did which was attacked, the appeal failed.

The learned Chief Justice, however, considered the other grounds of attack and pronounced against them. They were:—

(1) That no payments should have been made except on progress certificates issued by an inspecting engineer appointed