

FIRST DIVISIONAL COURT.

DECEMBER 20TH, 1918.

\*STOTHERS v. TORONTO GENERAL TRUSTS CORPORATION.

*Railway—Trustee for Bondholders and for Municipal Corporations Guaranteeing Payment of Bonds—Account—Payments Made by Trustee under Engineer's Certificates pursuant to Directions of Order of Court Made upon Summary Application—Validity of Order—Rules 938-943 of 1897—Motion by Way of Originating Notice—No Notice of Motion Served—Representation of Interests of all Parties upon Motion—Several Municipal Corporations in same Interest Represented by one—Rules 193, 358 of 1897—Contract—Mortgage-deed—Requirements as to Certificates—Duty of Trustee—Sale of Unguaranteed Bonds.*

Appeal by the plaintiffs from the judgment of SUTHERLAND, J., 13 O.W.N. 290.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

E. D. Armour, K.C., William Proudfoot, K.C., P. A. Malcolmson, and C. Garrow, for the appellants.

I. F. Hellmuth, K.C., and E. T. Malone, K.C., for the defendant corporation, respondent.

MEREDITH, C.J.O., read a judgment in which he said that the plaintiffs were Thomas Stothers, in whom the assets of the Ontario West Shore Railway Company were vested by statute, and the Municipal Corporations of the Town of Goderich, the Town of Kincardine, the Township of Ashfield, and the Township of Huron, and they sued for an account of the moneys received and paid out by the respondent corporation in connection with the railway, and payment to the plaintiffs of any money improperly paid out by the respondent corporation, and for interest, and for delivery up of bonds, etc.

The respondent, acting upon an order made by Middleton, J., on the 13th April, 1911 (Re Ontario and West Shore R.W. Co., 2 O.W.N. 104), upon summary application, paid over to the railway company the whole of the money which had come to its hands except two sums of \$30.06 and \$317.96.

By the judgment now appealed against the respondent was ordered to deliver to the appellant Stothers the 20 unguaranteed bonds in its hands and to pay to him the two sums mentioned; and, subject to that direction, the action was dismissed.

The action of the respondent in paying over the money that it had received was attacked on various grounds.