

Meredith, C.J.C.P., Britton, J., Magee, J.]

[April 30.]

## MONTGOMERY v. SAGINAW LUMBER CO.

*Third party procedure—Service of notice on third party out of jurisdiction “proceeding”—3 Edw. VII. c. 8, s. 13(O.)—Con. Rule 162(e)—Breach of contract within Ontario—Indemnity.*

A third party notice is a “proceeding” within the meaning of 3 Edw. VII. c. 8, s. 13(O.), providing that in Con. Rule 162 the word “writ” shall be deemed to include any document by which a matter or proceeding is commenced; but, when applying Con. Rule 162 (e) to service out of Ontario of a third party notice, the word “action” must be read as if it were “third party proceeding”—the effect being that service can be allowed only where the third party proceeding is founded on a breach within Ontario of a contract, wherever made, which is to be performed within Ontario; and in this case there was no breach within Ontario, because the contract under which indemnity was sought by the defendants against the third parties was one under which the obligation to indemnify did not arise until judgment had been recovered and the amount paid by the defendants, and the defendants were in the same action opposing the recovery of judgment.

Order of ANGLIN, J., reversed.

C. A. Moss, for third parties. W. E. Middleton, for defendants.

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[April 30.]

## WAY v. CITY OF ST. THOMAS.

*Statutes—Special Act—Repeal by implication—Repugnancy to subsequent general Act—Rule of construction—Assessment and taxes—Exemptions—Railway—By-law of municipality—Commutation—School rates.*

A city council in 1897 passed a by-law providing that a certain annual sum should be accepted from a railway company for 15 years “by way of commutation and in lieu of all and every municipal rate or rates and assessment,” in respect of certain lands owned by the railway company. This by-law was passed