

W. S. MacBrayne, for the appellants.

J. L. Counsell, for the defendants, respondents.

THE COURT dismissed the appeal with costs.

HIGH COURT DIVISION.

SUTHERLAND, J., IN CHAMBERS.

SEPTEMBER 25TH, 1916.

TORONTO GENERAL TRUSTS CORPORATION v.
KINZIE.

Costs—Security for Costs—Præcipe Order—Claim of Defendant against Third Party—Service of Notice—Place of Residence of Defendant not Stated in Notice—Writ of Summons Served along with Notice—Residence of Defendant Stated to be out of Jurisdiction—"Plaintiff"—Judicature Act, R.S.O. 1914 ch. 56, sec. 2 (r)—Rules 165 (2), 169, 375.

An appeal by one Lippert, a third party, from an order of a Local Judge setting aside a præcipe order for security of costs, issued by the third party against the defendant, upon the ground that the issue of the order was an abuse of the process of the Court.

In the writ of summons the plaintiffs stated the address of the defendant as the village of Success, in the Province of Saskatchewan. The defendant served a third party notice on Lippert, claiming to be indemnified by him against liability to the plaintiffs under the mortgage sued upon. In the third party notice, the address of the defendant was not given or indicated. A copy of the writ was served by the defendant with the third party notice, pursuant to Rule 165 (2). The third party, treating himself as defendant, in so far as the defendant was concerned, and the latter as plaintiff, and assuming that, because the plaintiffs in the writ had stated the defendant's address as being without the Province, he could assume it to be so for that purpose, took out the præcipe order which was set aside by the Local Judge.

J. A. Scellen, for Lippert, contended that the term "plaintiff," according to the Judicature Act, R.S.O. 1914 ch. 56, sec. 2 (r), applies to a defendant who serves a third party notice, as between him and the third party, and also that Rule 375 applies, and that, as the defendant served, with the third party notice, a copy of the