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APRIL 30TH, 1906.

DIVISIONAL COURT.

MONTGOMERY v. SAGINAW LUMBER CO.

Third Party Procedure—Service of Notice on Third Party out of Jurisdiction—“Proceeding”—3 Edw. VII. ch. 8, sec. 13—Rule 162 (e)—Breach within Ontario of Contract—Employers’ Insurance Contract—Indemnity.

Appeal by the Standard Life and Accident Insurance Company, from order of ANGLIN, J., ante 619, allowing appeal by defendants from order of local Judge at Windsor setting aside his own ex parte order allowing defendants to issue and serve upon the appellants a third party notice, and setting aside the service thereof on the appellants.

C. A. Moss, for appellants.

W. E. Middleton, for defendants.

The judgment of the Court (MEREDITH, C.J., BRITTON, J., MAGEE, J.), was delivered by

MEREDITH, C.J.:—We have come to the conclusion that upon the single ground, without considering the others, that the case is not, within the Rules, one in which leave to serve a proceeding out of the jurisdiction could have been granted, the appeal must be allowed and the order of the local Judge restored. But for the provisions of the Act of 1903, which amended the Rule and made it apply not only to the writ, but to any other document by which an action or other proceeding may be commenced, there would be clearly no jurisdiction. (The reference is to 3 Edw. VII. ch. 8, sec. 13: “In