

have disregarded the prohibition of the Ontario Insurance Act, while it would prevent their maintaining any action in respect to such business (*Bessemer Gas Engine Co. v. Mills*, 8 O. L. R. 647, 4 O. W. R. 325), cannot avail them as a defence against a claim upon their policy otherwise valid. If liable to suit, they are liable to third party procedure, because of the provision of Rule 209 that a third party notice shall be served "according to the Rules relating to the service of writs of summons," of which Rule 162 is one.

Upon the motion which defendants must make under Rule 213, the third parties may obtain such directions as the Court may deem requisite or proper to assure to them the benefit of any special provisions of their contract with defendants. Moreover, it will be open to the Judge or officer who deals with that motion to further consider whether, having regard to all its features, this is a case proper for the application of the third party procedure: *Donn v. Toronto Ferry Co.*, 11 O. L. R. 16, 6 O. W. R. 920, 973.

The appeal of defendants will be allowed with costs here and below, to be costs to defendants in the third party proceedings in any event thereof.

HODGINS, LOC. J. IN ADMIRALTY.

APRIL 12TH, 1906.

EXCHEQUER COURT IN ADMIRALTY.

CANADIAN LAKE AND OCEAN NAVIGATION CO. v.
THE "DOROTHY."

*Ship—Collision—Rules of Road—Negligence—Conflicting
Evidence—Damages—Costs.*

Action for damages for a collision, tried at St. Catharines and Toronto.

F. King, Kingston, for plaintiffs.

W. D. McPherson, for defendant ship.

THE LOCAL JUDGE:—This case is an illustration of the experience which Admiralty Courts have had of the conflict of evidence in collision cases. As has been well said by Mr.