

SECOND DIVISIONAL COURT.

MAY 8TH, 1918.

\*ATTORNEY-GENERAL FOR ONTARIO v. RAILWAY  
PASSENGERS ASSURANCE CO.

*Company—Insolvency of Trust Company Incorporated by Dominion Statute—Winding-up Order—Company Licensed to Do Business in Ontario—Loan and Trust Corporations Act, R.S.O. 1914 ch. 184—Application to Dominion Company—Powers of Provincial Legislature—Question not Open in Action on Bond—Election of Company to Give Bond as Term of Receiving License—Liability of Sureties—Extent of—Amount of Liability of Principal Debtor—Lien—Subrogation—Appeal—Costs.*

An appeal by the defendants from the judgment of LATCHFORD, J., 13 O.W.N. 247.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, MIDDLETON, and KELLY, JJ.

W. N. Tilley, K.C., for the appellants.

H. T. Beck, for the plaintiff, respondent.

The judgment of the Court was read by MIDDLETON, J., who said, after briefly setting out the facts, that, as the result of a reference and certain appeals, it had been determined that advances had been made by the Dominion Trust Company, acting as executors of the will of the late Geoffrey Strange Beck, out of capital money of the estate of the deceased, to Helen and Doris Beck, who were entitled only to income. These advances amounted to \$2,200.89 each. Helen Beck was entitled to other money to the amount of \$2,107.85, which, being set off, left a balance of \$93.04 due by her. Doris Beck was entitled to set off \$253.55, leaving a balance due by her of \$2,064.

The Dominion Trust Company, being liable for these balances of the amounts improperly advanced, was held to have a lien upon the income of these ladies accruing to them under the terms of a trust-deed, and this lien was declared to continue in favour of the liquidator of the trust company.

This action having been brought upon the bond which the trust company procured the defendants to give, the defendants contended that the provisions of the Loan and Trust Corporations Act, R.S.O. 1914 ch. 184, under which the bond was demanded and given, were ultra vires so far as it was sought to apply them to a Dominion company.