

But the arbitrators proceeded, both parties appeared before them and went on with the arbitration; the award was made on the 20th June, and was not moved against or appealed from, and had been acted on by the defendant paying and the plaintiff accepting the weekly payments. The act of the parties in proceeding after the 5th June amounted to a parol submission: Ryan v. Patriarche (1906), 13 O.L.R. 94, and cases cited; the award was made pursuant to that parol submission; and was binding so far as the point as to time was concerned.

The plaintiff contended further that there was no award because the arbitrators did not meet together and sign the document called the award in the presence of each other; citing Wade v. Dowling (1854), 4 E. & B. 44; Lord v. Lord (1855), 5 E. & B. 404. See also Nott v. Nott (1884), 5 O.R. 283. But this contention was not open to the plaintiff, not being raised in her reply; and an amendment should not be allowed for the purpose of raising it.

The award should be maintained and the action dismissed; costs as usual in alimony actions.

LATCHFORD, J.

DECEMBER 8TH, 1917.

***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 under Loan and Trust Corporations Act—Security-bond Made to Provincial Minister for Benefit of Creditors of Company in Ontario—Company Indebted to Estate in its Hands as Executor—Action on Bond—Power of Provincial Legislature to Require Dominion Company to Obtain License to Do Business in Province—Question not Open in Action on Bond—Election of Company to Give Bond—Liability of Surety—Validity of Bond—Proof of Default by Company or Liquidator.

Action upon a bond made by the defendants as sureties for the Dominion Trust Company, a company incorporated by a Dominion statute. By the bond, the defendants bound themselves to the Minister under whose direction the Loan and Trust Corporations Act, R.S.O. 1914 ch. 184, is administered, in the sum of \$100,000, on the condition that, if the Dominion Trust Company should duly perform each and all of the duties to which it might be appointed under the said Act and by the order in