There was no covenant not to take other proceedings. The two arbitrators named appointed a third, but found that they could not get through by 30th October, and each of them so wrote to the party who had nominated him, but said they would proceed with the arbitration. They did not, however, by writing extend the time for the award. They found the accounts involved, and evidence and vouchers needed, the production of which caused delay, and they had to adjourn from time to time, and had some 40 or 50 meetings, each of the two original arbitrators obtaining from time to time from his nominator explanations, proofs, and vouchers as items came up. The plaintiff appears to have protested from time to time to his arbitrator against the delay and against going on. He did not, nor did counsel, solicitor, or agent for him, attend any of the meetings, nor does it appear that defendant did. The arbitrators seem to have been left to themselves in trying to arrive at the facts and conclusions. Finally, about May or June, 1906, plaintiff positively instructed his arbitrator not to proceed further, and in consequence that gentleman so informed his colleagues, and himself declined to go on, and nothing more was done excepting meeting once as to some items which were then being dealt with. They had done about three-fourths of the work referred to them, but it would still require several months before it could be completed in the ordinary course, and the items and matters yet to be considered are of a more contentious character than those which they have already had before them. It is urged for plaintiff that they can be more effectively dealt with by an officer of the Court, and such is the opinion even of defendant's arbitrator. For defendant it is pressed that the arbitration should proceed, that plaintiff had been cognizant of and assenting to and even aiding in the work done, and expense has been incurred which should not now be rendered useless. The question comes up now by way of defence at the trial.

Assuming that plaintiff's course amounted to an assent to the arbitration being proceeded with, it would be only a parol submission: Ruthven v. Rossin, 8 Gr. 370; Hull v. Alway, 4 O. S. 375. And, being so, it could not have been made a rule of Court under 9 & 10 Wm. III. ch. 15, nor could an application for stay of proceedings have been made under the Common Law Procedure Act of 1856, sec. 91.