

and then the defendants' counsel asked to amend his pleadings by raising that question, amongst others.

Further than this, one of the defendants swears that he was advised by his agent Delmarle, broker, not to accept arbitration, that he did not want arbitration, and that he would not have consented to arbitration. It seems to me that if the defendants had any rights under this clause, then those rights were waived by these various facts and circumstances, and there is clearly the right to waiver, as stated in 2 Am. & Eng. Encyc. of Law, 2nd ed., pp. 586, 587; I refer particularly to note 5 on p. 586, including the case of *Wright v. Susquehanna Mutual Fire Insurance Co.*, where the Court said: "It was the right of either party to demand arbitration; it was the right of either party to waive it; and the defendant, having made no such demand, must be presumed to have waived it." And note 5 also includes a reference to *Russell on Awards*, 6th ed., p. 63, where it says that "until the arbitrators are named in such an agreement, the submission is not complete, because there is no one who has binding authority to determine the questions submitted." But, beyond this, I do not think such a general clause as to arbitration as we find in these bought and sold notes is sufficient to oust the jurisdiction of the Courts, and as authority for this I refer also to the same volume and edition of the *Am. & Eng. Encyc.* at pp. 570, 571, 572, and 573. On p. 570, note 2, there is a reference again to *Russell on Awards*, at p. 64, where he says that the rule that persons by private agreement cannot oust the Courts of their jurisdiction seems sometimes to have been misunderstood; and then he adds, that such an agreement does not oust the jurisdiction of the Courts where there are no excluding words; and at p. 572, in note 2, he refers to the case of *Snodgrass v. Gavit*, where the terms of the agreement were that all misunderstandings or questions between the parties thereto should be submitted to 3 arbitrators to be mutually chosen, whose decision should be final, and it was held that in order to make this stipulation a defence to an action on the contract, the defendant must first shew that he offered to choose arbitrators, and that the plaintiff refused. I also refer to the supplement of the same *Encyc.* at p. 313, in note 2, referring to the case of *Hind v. Lowe*, where it was held that a contract which contained a general agreement to arbitrate differences of opinion arising between parties, but which did not make a submission to arbitration a condition precedent to the right to sue,