could not understand why parties should not be allowed to settle their differences as they themselves might think proper. It was right that the courts should not be ousted of their jurisdiction; but the case of *Avery* v. *Scott* had decided that parties might make an agreement whereby there should be no cause of action until there had been an arbitration; and this enactment (the 17th and 18th of Victoria, chap. 125, sect. 11) had for its object to give those who were parties to such an agreement to refer the full benefit of it. That benefit could not be enjoyed if a man could bring an action for a clearly admitted demand, at the same time that he was liable to a greater demand arising out of the same contract. There was no dispute that freight was due for the month which had expired, and there was a claim by the defendant on the ground that there had been a breach of an implied warranty of seaworthiness; and it might have been the intention of the parties that such damages should be referred, and that an arbitrator should see to which side the balance was due. He (Lord Campbell) thought the action ought to be stayed and that the arbitration ought to proceed.

The other judges expressed similar opinions.

Rule absolute.[1]

"In whatever form this clause is put," says Angell, § 354, "it will not take away the jurisdiction of the ordinary courts of law."

In modern France arbitration is not viewed unfavorably, but it is absolutely necessary, in any agreement for it, to state its objects, and the names of the arbitrators. C. Proc., 1006, 1 Alauzet, p. 386. Dalloz of 1844, 1 p. 97.

In old France such agreement was good, though no arbitrators were named.

In Lower Canada if parties state the questions between them, agree to refer to arbitrators, name them, and state their powers, and that no suit shall be brought but for the amount that shall be found due by the arbitrators, and to give effect to the reference derogate from the common law, their agreement is valid, and will bar any suit brought before such report of arbitrators.

Usually the clauses meant to secure arbitrations are too general. Such is the clause at the head of this section, under which such decisions as in *Scott* v. *Phœnix Ass. Co.*, Stuart's Rep., and *Kill* v. *Hollister*, 1 Wils., would have to be repeated to-day.

In *Goldstone et al.* v. *Osborn et al.*,[1] by one of the conditions in a policy it was stipulated, that "if any difference should arise on any claim, it should immediately be submitted to arbitration," and directed how the arbitrators should be chosen, and added, that no compensation, damages or debt should be payable until after an award determining the amount thereof should be made; it was nevertheless held that the insured might maintain an action on such policy notwithstanding the condition; as the insurers denied the general right of the insured to recover anything, and did not merely call in question the amount to be recovered. The plaintiff had never been unwilling to agree to a reference as to the amount of his loss, to be paid to him; but the defendants insisted that the condition clause meant reference even as to right whatever, to receive anything, and so thought the judge at the trial.[2]

[1] Q. B., Nov. 1856.

[1] 2 Carr. & P.

[2] For further on arbitration as a condition precedent, see 16 Alb. L. J. 465. Also 21 Am R. p. 80, (a Pennsylvania case.) But the latest debate is in *Edwards* v. *Aberayron Ship Ins. Society*, 17 Eng. Rep., Law Rep., 1 Q. B. Div. 563. In the case in 21 Am. Rep., the clause was held of no force to oust ordinary courts. But that a condition that shall order the amount of loss to be determined by arbitrators (loss admitted and liability admitted) would work. If in a building contract certificate of architect be condition precedent, this works.

EXCHEQUER COURT OF CANADA.

A special sitting of the Court, for the trial of causes, etc., will be held at the Court House, Montreal, commencing on Tuesday, April 21st, at 11 a.m.

Special sittings of the Court will be held during the year 1891, as follows:—

At the Court House, St. John, N.B., commencing on Tuesday, 26th May.

At the Court House, Charlottetown, P.E.I., commencing on Tuesday, 2nd June.

At the Court House, Sydney, C.B., commencing on Tuesday, 9th June.