ed? Apparently yes, under such a clause as the Ætna's.

Under a clause like the Ætna's at the head of this chapter, the defendants did, within the thirty days, give notice. Plaintiff, who had commenced rebuilding, refused permission to defendants to rebuild, and sued for the insurance money. His action was dismissed. *Semble*, the notice of intention may be by the insurers' agent and vice-president, notice from them would certainly be good if plaintiff raise his objections on other grounds.[1]

§ 253. *Submission to arbitration.*

In case differences shall arise, touching any loss or damage, it may be submitted to the judgment of arbitrators indifferently chosen, whose award in writing shall be binding on the parties.

Though the courts of law are the regular tribunals to entertain demands upon policies of insurance, there is no doubt that, all over the world, the parties to a policy may agree that any differences between them shall be referred to arbitration. In England care must be taken only that the Courts of Law be not *totally* ousted of their jurisdiction. In 1853 it was held that agreement, by policy, that the sum to be paid to insured for loss should, in the first instance, be ascertained and fixed by a committee, and in case of any difference arising that certain arbitrators should be selected to settle the same, which settlement should be a condition precedent to the right of the insured to maintain any suit or action, was not an agreement ousting the Superior Courts of their jurisdiction, as it did not deprive plaintiff of his right to sue, but only made it a condition precedent that the amount to be sued for or recovered should be first ascertained by the committee, or arbitrators.[2]

Afterwards in 1854 the Common Law Procedure Act enacted that, whenever the parties to any deed or agreement in writing shall agree that any existing or future differences between them shall be referred to arbitration, and any one of the parties shall nevertheless commence any action against the other it shall be lawful for the Court or a judge, on application by the defendant, after appearance and before plea, upon being satisfied that no sufficient reason exists why such matters should not be referred to arbitration according to such agreement, and that the defendant was at the time of bringing the action willing to join in the reference, to make a rule to stay proceedings in the action on such terms as to the Court or judge may seem fit. The working of this Act is well illustrated by *Russell* v. *Pellegrini*. This was a rule calling on the plaintiff to show cause why the action should not be stayed and the subject matter in dispute referred to arbitration. The rule was granted under the 11th section of the Common Law Procedure Act, 1854. The plaintiff was a shipowner, and had entered into a contract of charter party with the defendant, whereby the defendant chartered a ship as so much per month. The ship was considered by the defendant to be unseaworthy, and he claimed of the plaintiff damages for the breach of an implied warranty of seaworthiness. The plaintiff also claimed of the defendant one month's freight. This difference having arisen, the defendant called on the plaintiff to have the dispute referred to arbitration, under a clause in the charter party, that if any difference should arise out of the contract the matter in dispute should be decided by an arbitrator; but the plaintiff refused on the ground that the defendant's claim was for unliquidated damages which could not be set off against his demand for the freight. He accordingly brought the present action for one month's freight, and the defendant obtained the present rule, on the ground that the plaintiff ought to have joined in the reference.

Lord Campbell said he thought the rule ought to be made absolute. The enactment on which the application was founded was a most salutary one. At one time the courts in Westminster hall had the greatest horror of arbitrations, and it had even been made a question whether such a clause as the present was not illegal, and whether an action could be sustained for the breach of such an agreement to refer. He (Lord Campbell)

[1] *Beals* v. *Home Ins. Co.*, New York; 9 Tiffany, A.D., 1867.

[2] *Avery* v. *Scott*, 8 Exch.; 20 E. L. & E. R.