

PRACTICE—AGREEMENT TO REFER—ACTION IN RESPECT OF MATTER AGREED TO BE REFERRED—STAY OF PROCEEDINGS—STEP IN PROCEEDINGS—ARBITRATION ACT 1889 (52 & 53 VICT., C. 49) S. 4—(R.S.O. C. 62, S. 6).

In *The County Theatres v. Knowles* (1902) 1 K.B. 480, the defendants applied to stay the proceedings under the Arbitration Act (see R.S.O. c. 62, s. 6) on the ground that the parties had agreed that the matters in question should be referred to arbitration. It appeared that the defendant had attended on a summons for directions in the action taken out by the plaintiffs on which an order had been made that the plaintiffs and defendant should respectively make discovery of documents, and it was held by Lawrance, J., and his opinion was confirmed by the Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.), that the defendant had taken a step in the proceedings and was consequently not entitled to a stay, as the defendant might have objected to any order being made on the ground of the agreement to refer.

CONTRACT—MEASURE OF DAMAGES—BROKER CONTRACTING TO CARRY OVER STOCKS—BREACH OF CONTRACT TO CARRY OVER STOCKS.

Michael v. Hart (1902) 1 K.B. 482, was an action against brokers for breach of a contract to carry over certain stocks purchased by them for the plaintiff's account until the settling day in May. Before May the stocks fell in price and the brokers without instructions from the plaintiff closed the account by selling the stocks. Subsequently the price rose and they were higher at the date of the May settlement, having been still higher during the interval. The question was whether the plaintiff was entitled to have his damages assessed with reference to the price of the stocks at the date of the sale, in which case they would be merely nominal, or whether he was entitled to damages measured by the difference between the price realized and the price at the date of the May settlement. The Court of Appeal (Collins, M.R., and Romer and Mathew, L.JJ.) decided that the damages should be ascertained by reference to the price at the May settlement. Wills, J., had held that as the plaintiffs were entitled to instruct the defendants to sell the stock at any time before the settlement day, they were therefore entitled to have the damages assessed with reference to the highest prices reached, but the parties having come to a compromise on this point, the Court of Appeal did not adjudicate upon it.