Act, and were in a different position from that of the defendants here.

The fact that the right to arbitration is given by legislation does not make that right, when given, any higher than if it had been obtained by private contract, and I am of opinion that the application is too late.

There is no hardship in so holding. No claim can be made against the insurance company until the lapse of 60 days from the delivery of the proofs of loss. This is surely ample time to allow to an insuring company to determine whether they desire to contest the amount. Then, even after the accruing of the cause of action and issue of the writ, they have some 18 days before their statement of defence is due. During this time an application may be made for a stay; and if the defendants, instead of moving for a stay, choose to put in a pleading, they must be held to have elected that method of having their rights determined and to have waived the provision for arbitration. Upon an application to stay (if made at the right time) the Court could make an order staying the action generally, if the only question were that of amount, or staying the action so far as regards the amount, if there were other issues. The only other statutory provision for staying an action is to be found in the Ontario Judicature Act, sec. 57; and, no doubt, that reserves to the Court all its former powers. But this is not a case within such powers.

Appeal allowed with costs in this Court and below.