amount of the claim, certainly; but further even they might go; it was a lawful agreement (he held.)

In *Ulrich* v. *Nat. Ins. Co.* [1] there was a condition that if differences arise after proofs touching loss, at the written request of either party, they shall be referred to impartial arbitrators whose award should bind as to the amount of loss; and that no suit for recovery of any claim should be sustainable in any court until after an award fixing the amount in manner provided. No request being, the defendants succeeded at the first trial. The Queen's Bench made absolute a rule to enter verdict for plaintiff, and the court of appeals maintained that for want of written request.

In Quebec province there is nothing to prevent reference upon the question as to the right of the insured whatever to receive anything. Such question as easily and lawfully may be referred as the one as to quantum of loss.

Covenant to refer cannot be pleaded in bar, says Angell, § 354.

Of course this is now to be accepted only with qualification *ut supra.*

§ 255. *Award of arbitrators may be pleaded in bar.*

If after a loss a reference have been followed by an award, such award may be pleaded in bar of an action, and, after a submission, "reference depending" may be pleaded in bar. It ought to be so all the world over.

A insures, mortgages afterwards, and transfers the policy to B who is approved by the insurers. Fire happens. After this can A refer to arbitration the question of amount of loss by the fire, without B's assent or concurrence? *Semble* no.[2]

Some policies oblige before suit to tender arbitration. This is a good clause in Louisiana and Lower Canada, but may be waived by defendant. *Millandon case,* 8 La. Rep. Yet the clause was held invalid in Maine.[3]

The clause ought to hold good everywhere.

In France it has been held by the Court of cassation (13 Feb., 1838), "des associés peuvent après la dissolution de la société valablement convenir que la rectification des erreurs dans les comptes de la liquidation aura lieu par la voie amiable seulement, et qu'elle ne pourra être demandée judiciairement." J. du Pal. of 1838, 1 part., p. 292.

Where a carriage was burnt all except three wheels, that was held to be a total loss, in a case in California. [1]

In *Roper* v. *Leudon,* [2] it was held that an agreement to refer, if only collateral to the agreement to pay, will not oust the jurisdiction of the ordinary courts until there has been a reference. This case is not like *Scott* v. *Avery,* in which the agreement was to pay only such a sum as arbitrators should award. The condition in *Roper* v. *Leudon* was: In case of any difference touching loss or otherwise in respect of any insurance, such difference shall be submitted to the determination of two persons as arbitrators, one chosen by the company, etc., and the award of any two of the three arbitrators shall be binding on all parties.

The plea alleged that there had been differences and disputes; that the company had never declined to refer the disputes to the determination of arbitrators, of which the plaintiff was notified, and the plaintiff's loss had never been determined by arbitrators. That plea was demurred to, and the demurrer was maintained. Lord Campbell, Ch. J., said that under the Common Law Procedure Act, sect. 11, the defendant might have taken out a summons to refer the question of amount, but he had not done this, and so his plea was bad.

Usually the clauses are too general. If parties, in Lower Canada, agree to refer, name arbitrators, and stipulate that no action shall be brought for more than the amount found, and there be derogation from the common law, the agreement will be valid. Here the defendants do not deny the plaintiff's right to recover anything as the defendants did in *Goldstone* v. *Osborne,* where the insured was admitted to sue. In Lower Canada and Louisiana, a condition of the policy may

[1] 4 Ontario App. Rep., A.D. 1879.

[2] *Brown* v. *Roger W. Ins. Co.,* 5 Rhode Island R.

[3] *Stephenson* v. *Piscataqua F. & M. Ins. Co.,* 54 Maine R.

[1] Albany Law Journal, A.D. 1880, p. 256.

[2] 1 Ellis & Ellis, A.D. 1859.