their policy, the true amount of their liability under the said policy, and that it is owing to the conduct of the plaintiffs in not proceeding first with the appraisal aforesaid, and in the second place in not proceeding with the arbitration aforesaid, that the said loss has not been paid;" and they "say that this action should not be proceeded with until after the said arbitration has been had." Issue was joined on 17th September, and notice of trial given for the imminent jury sittings to be held on 8th October at London.

A motion was made on behalf of defendants on 25th September before Meredith, C.J., to stay the action; and before him all defences . . . were withdrawn, and it was represented that the whole matter in dispute was the amount of the loss. The Chief Justice made an order staying all proceedings until further order of the Court.

Upon the appeal before us two grounds were relied upon.

First, that by the effect of clause 17 of the statutory conditions the cause of action had accrued before demand for arbitration, and the action being properly brought should not be stayed. Upon principle it is impossible to give effect to such a contention, and if authority were needed it is supplied by Hughes v. London Assurance Co., 4 O. R. 293.

The other objection is more formidable, based as it is on sec. 6 of the Arbitration Act, R. S. O. 1897 ch. 62. Insurers and insured under a policy containing or subject to clause 16 of the statutory conditions have been held to come within the words "any party to a submission" in this section and its predecessors: Hughes v. Hand-in-Hand Ins. Co., 7 O. R. 615, and other similar cases. The power given the Court to stay proceedings under this sec. 6 of R. S. O. ch. 62 is upon an application after appearance and before pleading or any other step in the proceedings. An application after delivery of statement of defence, as in this case, must be refused: West London Ins. Co. v. Abbott, 29 W. R. 584. And the case so much relied upon by counsel for the defendants, upon examination, does not support his contention.

In Hughes v. London Assurance Co., 4 O. R. 293, Hughes v. Hand-in-Hand Ins. Co. 3 C. L. T. 600, 4 C. L. T. 34, appearance was entered on 2nd November, 1883, and upon the same day notice of motion was served returnable 5th November. It will be seen that the insurance companies . . . brought themselves within the provision of what constituted at that time what is now sec. 6 of the Arbitration