Appeal with a view to restoring and disposing of the notice of appeal which relates to the new trial, and that the judgment of Darling, J., should be stayed for a month with a view to such application.

I am of opinion also that the respondents should pay the costs here and I think in the Court of Appeal also, and I move your Lordships accordingly.

LORD DUNEDIN—I concur. I certainly have not got the slightest idea that in pronouncing the judgment we are about to give we are in the faintest way throwing any doubt upon the decision of this House in the case of *Scott* v. *Avery*. That decision in the case of *Scott* v. *Avery* was again upheld by the House in a more recent case of *Caledonian Insurance Company* v. *Gilmour*, 1893 A.C. 85, at p. 90, where the Lord Chancellor (Lord Herschell) put the matter in a single sentence when he said—"The question is where the only obligation created is to pay a sum ascertained in a particular manner—where, in other words, such ascertainment is made a condition-precedent to the obligation to pay, the courts can enforce the obligation without reference to such ascertainment." Personally I should rather like to reserve my opinion as to what would have been the effect if the parties in this case, instead of pleading as they did, had pleaded in this way—"We will allow this question to be disposed of at law by a jury as to whether there was fraud and arson or not," and had gone on to say—"But in the event of that being negatived we wish this ascertainment of actual damage to be ascertained by arbitration." I should like to reserve my opinion on whether they might not have said so with effect.

The very clear argument of Mr Matthews tried to make out that if he once showed that at a certain time in Costa Rica a certain difference had arisen, then that brought into full operation the effect of the condition-precedent in clause 17 as being applicable to all suits. I do not think that that view can be maintained, because clause 17 provides for the case of a difference arising as to the amount of loss, and then says—"It shall be a condition-precedent to any right of action or suit upon this policy that the award of such arbitrator," and so on, "of the amount of the loss or damage if disputed shall be first obtained," I think it is perfectly clear that that clause necessarily refers to an existing difference, not a historical difference, and it seems to me that when the attitude was taken up by these parties which was taken up in the letters that have been read to me, which the learned Lord Chancellor has referred to, in England, that they repudiated the claim altogether and said there was no liability under the policy whatsoever, that necessarily cut out the effect of clause 17 as creating a condition-precedent against all forms of action. I therefore concur in the motion which has been made by the noble and learned Lord on the Woolsack.

LORD ATKINSON—I concur on this short ground. I think that clause 17 refers to existing disputes and differences about the amount of loss claimed, and in a contract on indemnity such as this is I do not think that clause has any application whatever when the person to indemnify says—"You yourself brought about the destruction of the goods that were insured for an indemnity for which you claim," and insists upon a clause which provides that in that state of circumstances all benefit under the policy is forfeited. I therefore think that the order should be made which has been suggested by my noble friend on the Woolsack.

LORD PARKER—I agree.

LORD PARMOOR—I concur. The respondents raised an issue on which, if they had succeeded, the appellants would have forfeited all benefit under the policy. This, in my opinion, would have included that benefit that would have been forfeited under clause 17 of the contract, the policy. At the same time I should like to express my own opinion that no difference would have arisen as regards matters that could have come under clause 17, and therefore the clause did not in any case apply.

Appeal allowed.

Counsel for the Appellant—G. Hewart, K.C.—S. Mayer, K.C.—D. O. Evans. Agents—Fielder, Jones, & Harrison, for C. T. Rhodes & Son, Halifax, Solicitors.

Counsel for the Respondents — J. B. Matthews, K.C.—Holman — Gregory, K.C. — P. B. Durnford. Agents — Andrews, Ogilvie, & Fisher, Solicitors.

HOUSE OF LORDS.

Monday, February 1, 1915.

(Before Earl Loreburn, Lords Atkinson, Parker, Sumner, and Parmoor.)

MAISEL *v.* FINANCIAL TIMES, LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Reparation—Slander—Veritas—Innuendo—Proof of General Character.

The appellant complained of certain words as bearing the innuendo that he was of dishonest character. The respondents referred to a series of acts by the appellant, which they alleged proved his dishonesty. The appellant claimed to have these allegations struck out of the pleadings as irrelevant.

Held that as the appellant maintained that the statements complained of meant that he was a dishonest person, the respondents were entitled to prove him to be so in justification of their statements.

Their Lordships' judgment was delivered by

EARL LOREBURN—It is not necessary to call upon counsel for the respondents in this case, because, in my opinion, the order

of the Court of Appeal is quite right. This is an action for libel setting out a statement about the arrest of the plaintiff upon a charge of fraud and other things about him. The plaintiff in his statement of claim interprets the libel by an innuendo. In the first place he says that in substance the acts referred to were dishonestly done, and in the second place he says that the libel in substance means that he, the plaintiff, was a man of dishonest character and unfit to be a director. Upon this the defendants justify and give particulars of other dishonest acts besides those referred to in connection with the arrest, by which they seek to establish that the plaintiff is a man of dishonest character and unfit to be a director by reason of various things he has done or that had occurred to him. The Court of Appeal thought this was right, because there were two distinct charges, according to the plaintiff's own interpretation, which were contained in this libel. Phillimore, L.J., says a few words which I will venture to repeat—"If the libel says of the plaintiff, 'You did one specific act, you stole a hatchet,' it is fair enough justification to say those words are true in their natural and ordinary meaning, 'you did steal it.' But if the allegation in the libel is an allegation of conduct, or life, or character, or the converse thing, then it is not enough to say the words are true. You have got to say the words are true because the plaintiff has done so and so. If the imputation is that the plaintiff is a thief, you have got to say it is true that he is a thief because he stole on this or that or the other occasion, or tried to steal on this, that, or the other occasion, and was only prevented by main force, or something of that kind."

Now, inasmuch as by the construction which the plaintiff himself has placed upon the libel the defendants are sued for charging generally that he is a dishonest person (I am not using particular language, but in substance that he is a dishonest person), it is quite obvious that they are entitled to give particulars to show why they say that the plaintiff is a dishonest person, and for that reason I think that the appeal ought to be dismissed.

LORDS ATKINSON, PARKER, SUMNER, and PARMOOR agreed.

Appeal dismissed.

Counsel for the Appellant — Schwabe, K.C. — W. B. Odgers. Agent — W. G. A. Edwards, Solicitor.

Counsel for the Respondents—Duke, K.C. —H. Fraser. Agents—Nicholson, Graham, & Jones, Solicitors.

PRIVY COUNCIL.

Tuesday, February 9, 1915.

(Present—The Right Hons. Lords Shaw, Parker, and Sumner.)

ATTORNEY-GENERAL OF SOUTHERN NIGERIA *v.* JOHN HOLT & COMPANY (LIVERPOOL), LIMITED, AND OTHERS, *et e contra;* SAME *v.* W. B. MACIVER & COMPANY, LIMITED, AND OTHERS, *et e contra.*

(*Appeals and Cross-Appeals Consolidated.*)

(ON APPEAL FROM THE SUPREME COURT OF SOUTHERN NIGERIA.)

Property—Land—Foreshore—Accretion—Reclamation.

Where in 1908 a road had been constructed by the Crown cutting off jetties, wharves, &c., erected by the respondents on land which was before 1861 below high water-mark, but had since been reclaimed by their structures or by the operation of nature, *held* that though there was no evidence of natural accretion the reclamation was presumably done with the approval of the Crown, and compensation was due for the damage admittedly done to the respondents' property by the construction of the road.

The considered judgment of their Lordships was delivered by

LORD SHAW—These are two appeals and two cross-appeals, all consolidated, against two judgments pronounced by the Full Court of the Supreme Court of Southern Nigeria on the 22nd April 1911, varying the judgment of Osborne, C.J., pronounced on the 14th March 1910. For the sake of convenience the Attorney-General for Southern Nigeria is hereinafter referred to as "the Crown" and the opposite parties as "the respondents."

The proceedings relate to certain lands in the district of Olowogbowo, in the Island of Lagos, which is now a part of the colony of Southern Nigeria. The lands consist of five plots, all of which are situated on the shore of the lagoon. As commerce has developed, these lands, and especially the frontage thereof to the sea, have become of considerable value. They adjoin each other, and in the view which is to be taken of these appeals the facts as to the different plots may be sufficiently stated as follows:—The respondent firm of Holt & Company were in occupation claiming as freeholders of (1) William's land and (2) Dunkley's land, and as tenants of the executors of the Rev. James White, who claimed to be the freeholders of (3) White's land. The respondents MacIver & Company were in the occupation of (4) George's land and (5) Johannsen's land as tenants of the freeholders of these respective plots. The whole premises were occupied for the purpose of the respondents' respective businesses as African merchants.

In regard to the possession and occupancy of the properties the admitted facts are