Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Richard Spurrier and John Le Cronier, Agents in Jersey of the Sun Fire Office, v. *George Francis La Cloche, from the Royal Court of the Island of Jersey; delivered* 14*th May* 1902.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD LINDLEY.
SIR FORD NORTH.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether the Royal Court of Jersey has given due effect to an arbitration clause contained in a policy of assurance against loss by fire.

The policy in question is dated the 4th January 1897. It is a fire policy for 1,000*l.* issued by the Sun Fire Office in favour of a Jersey gentleman named La Cloche on a collection of foreign stamps. The policy is in the English language but it was executed in Jersey by the agents of the Company. By the terms of the policy the Company agrees with the assured subject to the conditions endorsed to pay what may become due in case of loss out of its capital stock and funds. The witnessing part runs thus:—"In witness "whereof I for and on behalf of the said Com- "pany have hereunto set my hand and seal this "4th day of January 1897. Signed Spurrier "and Le Cronier Agent to the Sun Fire Office. "Signed and sealed at Jersey where no stamps

" are in use in the presence of Spurrier Jersey " and then there was a seal.

The conditions endorsed are 14 in number. They are in the English language. The twelfth condition which is the only material one is as follows :—

"12. If any difference shall at any time arise between the " Company or the insured or any claimant under this policy as " to the liability or the amount or extent of the liability of the " Company in respect of any claim for loss or damage by fire " or as to any question matter or thing, concerning or arising " out of any claim for loss or damage under this policy, every " such difference as and when the same arises, shall be referred " to the arbitration of some person to be appointed in writing " by both parties, or two indifferent persons, one to be ap- " pointed in writing by the party claiming and the other by " the Company, within one calendar month after either party " has been required so to do by the other party, and in case of " disagreement between the arbitrators then to the decision of " an umpire, who shall have been appointed in writing by the " arbitrators before entering on the reference, and who shall " sit with the arbitrators, and preside at their meetings during " the reference, unless the arbitrators shall otherwise agree in " writing, and the death of any of the parties shall not revoke " or affect the authority or powers of any arbitrator or umpire " and each party shall bear or pay his own costs of the reference " and a moiety of the costs of the award and in all other " respects the submission to arbitrators shall be subject to the " provisions of the Arbitration Act, 1889, or any statutory " modification thereof, and may be made a rule of Her Majesty's " High Court of Justice in any Division, upon the appli- " cation of either of the parties. And it is hereby expressly " declared to be a condition precedent to the liability of the " Company in respect of any claim under this policy that the " claim shall if not admitted, be referred to and determined by " such arbitrator, arbitrators, or umpire as aforesaid and the " claimant shall have no right of action against the Company " except for the amount of the claim if admitted, or the amount, " if any, awarded by the award of such arbitrator, arbitrators, " or umpire."

The first question which arises is whether this is to be regarded as an English contract or as a Jersey contract. Their Lordships are of opinion that although this policy was made in Jersey and any money payable under it would have to be paid to the assured in Jersey the nature of the transaction, the language in which the policy is expressed, and the terms of the agreement

and of the conditions all show that the contract between the parties is an English contract and that wherever sued upon its interpretation and effect ought as a matter of law to be governed by English and not by Jersey law. The intention of the parties is too plain to be mistaken; the contract to pay out of the funds of the Company is of itself very significant; and the reference to the English Arbitration Acts shows that the arbitration proceedings were to be conducted according to English law and no other. That the intention of the parties to a contract is the true criterion by which to determine by what law it is to be governed is too clear for controversy. See *Hamlyn & Co.* v. *Talisker Distillery Company* 1894 A. C. 202 and the intention here is unmistakeable.

It does not follow that the agents who signed the policy in Jersey were not liable to be sued in Jersey upon it; as their principals were in this country. But whatever would be a defence by the law of England for the Company on the merits to an action against the Company on the policy would be a defence for the agents if sued in Jersey for the nonpayment of money payable under the policy by the Company.

It follows from these observations that no action could be sustained in Jersey any more than in this country for any money payable under the policy unless and until the amount so payable had been settled by arbitration pursuant to the twelfth condition. See *Scott* v. *Avery* 5 H.L.C. 811 and *Caledonian Insurance Company* v. *Gilmour* 1893 A. C. 85. The contract is one on which no cause of action could accrue until the amount to be paid had been determined by arbitration and by arbitration as provided by the contract.

Mr. Deans contended that the arbitration clause was invalid by the law of Jersey because

not only the amount payable but also the liability to pay was to be decided by arbitration; and that this was an illegal attempt to oust the jurisdiction of the Court and went further than *Scott* v. *Avery*. But if a contract is so framed as to give no cause of action unless a certain condition is performed no question arises as to ousting the jurisdiction of any Court. It was by not observing the difference between no cause of action and a defence which assumes a cause of action but is based on the incompetence of a particular court to enforce it that the Court of Exchequer went wrong in *Scott* v. *Avery*. The oversight was pointed out and corrected in the Exchequer Chamber 8 Ex. 487 and again in the House of Lords. Maule J. put the matter in the true light in the Exchequer Chamber; he there said :—"There is no decision "which prevents two persons from agreeing that "a sum of money shall be payable on a con-"tingency; but they cannot legally agree that "when it is payable no action shall be maintained "for it" (8 Ex. 499).

Mr. Deans cited no authority to show that by the law of Jersey such a condition as that which has to be considered in this case is invalid and could be rejected even in a contract governed by the law of Jersey. Judging from the decision printed on page 43 of the Record it would seem that the law as laid down in *Scott* v. *Avery* prevails in Jersey. But in those cases the question of liability was not left to the arbitrator. However even if the law of Jersey had been shown to be what Mr. Deans contended it was the answer to his argument would still be that this policy is governed by the law of this country and not by the law of Jersey; and that the distinction he drew between arbitrations in which liability is left to arbitrators and those in which the amount payable only is so left is immateria

where an award settling the amount is a condition precedent to the right to payment of anything.

The foregoing observations really dispose of this appeal. What happened was as follows. In December 1898 a fire occurred in the house of the assured and his collection of stamps was damaged or destroyed. He gave notice of his loss and claimed 1,000*l*. He appointed a Jersey gentleman (Guiton) his arbitrator. The Sun Fire Office appointed an English gentleman (Thwaites) their arbitrator. The arbitrators could not agree upon an umpire. Thwaites wanted an English barrister; Guiton wanted some gentleman resident in Jersey which would save expense. Neither can be blamed for not giving way to the other. No application was made under the English Arbitration Acts to the Courts of this country to appoint an umpire. The Company could not proceed adversely to the assured who was beyond the jurisdiction of the English Courts and the assured preferred to apply to the Court in Jersey. Failure to agree upon an umpire brought the arbitration proceedings to a deadlock.

On the 30th September 1899 the assured brought an action in the Royal Court in Jersey on the policy against the agents who signed it and he claimed 1,000*l*. The Defendants relied on the 12th condition and the absence of any award as a defence to the action. On the 9th October 1899 the Royal Court ordered that the arbitrators should be summoned to appear. On the 6th November they did appear. Thwaites appeared by Counsel and objected to the jurisdiction of the Court over him. The Court then ordered the Defendants to appoint another arbitrator in his place. The Defendants declined to do this and the arbitrators were then dismissed from the action which was remitted

to the Greffier to assess the amount payable to the Plaintiff. On the 6th November 1900 the Plaintiff recovered judgment for 1,000*l.* and on the 4th December 1900 the Appeal Court confirmed the preceding orders and judgment. The present appeal is from this judgment of the Appeal Court and from the orders and judgment thereby confirmed.

On the merits of the case their Lordships do not think it necessary to add to what has already been said. No reasons are given for the judgment appealed from and their Lordships cannot make any observations upon them. The judgment appears to them erroneous in principle.

The order of the 6th November 1899 requiring the Defendants to appoint another arbitrator in the place of Mr. Thwaites appears to their Lordships to be erroneous for two reasons, viz. 1, because Mr. Thwaites had done nothing to justify his removal and 2, because if he had the Court in Jersey was not the proper tribunal to remove him. The English Arbitration Act conferred no such power on any foreign Court.

Their Lordships will therefore humbly advise His Majesty that the appeal ought to be allowed and that the judgment of the Royal Court of Jersey of the 4th December 1900 and the orders and judgment thereby affirmed ought to be reversed and that judgment ought to be given for the Defendants with costs.

The Respondent having obtained leave to defend this appeal *in formâ pauperis* no order can be made as to the costs of the appeal.