Ontario or New York. This point was only slightly argued; but it is important, for by it must be determined the question of the defendants' liability. The pleadings raise the issue that a blank form of contract was sent by the defendants from Toronto to their agent in New York, with authority to make a contract and fill up the blanks in New York; but there is no evidence in support of this allegation. The only evidence in respect of this particular contract is that it was received from the defendants' agent in New York on the 7th or 8th August, and that on the 11th August the claimant's cheque for the premium, payable to the order of the defendants, was handed to the defendants' agent, and by him transmitted to the defendants at Toronto, who returned the same to the claimants on the 17th August, with a letter repudiating the liability.

The right of the claimants depends upon the question by what law the contract is to be governed. This question is usually one of the intention of the parties; but in the absence of any indication of that intention, or of any special circumstances which would show that another place was to govern, it will ordinarily be held that the law of the place where the final assent is given by the party to whom the proposition is made, or where the company has been incorporated, will govern, especially if that be the place where the money is to be paid. But if no place is named for the payment of the money, or if the contract may be performed anywhere, then the law of the place where the contract was entered into; and this may further depend upon a consideration of the powers of the agent.

In *Parken* v. *Royal Exchange Assurance Co.*, 8 Sess. Cas. (Scot. 1846) 363, where an agent received an application for assurance, and forwarded it to the head office in London, and in due time received back a policy which he delivered to the insured at Edinburgh, and received from him the premium; it was held that the contract was made in England, and that it had no analogy to an order sent to London for goods to be delivered by the London house in Scotland. The court laid stress on this: that though no place of payment was in terms provided, England was in law that place. So in *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. 516. In that case the contract was made between the plaintiff and an agent of the company in the State of Georgia. The plaintiff was a resident of that State; the defendants were incorporated and had their head office in New Jersey. The action was brought in one of the New York courts; and it was held that as no place of payment was mentioned it must be assumed that the payment was to be made in New Jersey, where the principal office of the company was situated, and that the contract must be governed by the law of the State of New Jersey. See also *McGivern* v. *James*, 33 U. C. R. 203.

Here the contract appears to have been executed in Toronto; and although no place of payment is mentioned it must be held that the payment of the insurance money, and therefore the performance of the contract, was to take place in Toronto. And there is nothing in the contract or in the evidence to show that its validity depended upon any special circumstances, or act to be done by the defendants' agent, which would bring it under the law of New York. This and the act of the claimants in making their cheque for the amount of the premium payable to the defendants and not to the agent are matters which affect the consideration of the question by what law the contract is to be governed. For these reasons it must be held that the contract in question is governed by the law of Ontario; and by that law the non-payment of the premium renders the contract incomplete; and this is a good defence to an action on a policy of insurance: *Walker* v. *Provincial Ins. Co.*, 7 Gr. 137, 8 Gr. 217, s. c. 5 U.C.L.J. 162.

After intimating to the parties my opinion as above, Mr. Falconbridge applied for leave to give further evidence to show that the policy in this case had been signed and sealed in blank by the defendants in Toronto, and forwarded to their agent in New York to be filled up and delivered to the claimants. This application was opposed by the defendants, but I stated I would consider whether such evidence if given would bring the contract under the law of New York. I think it would not. The agent in New York when filling up the blanks, was giving no greater validity to the contract than a clerk doing the same act in the head office; and such agent's act could only have relation to the act of the defendants in signing and sealing the policy in Toronto. The act of the claimants in making their cheque payable directly to the defendants and not to their agent also shows what was their view