Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hiddle and another v. *The National Fire and Marine Insurance Company of New Zealand, from the Supreme Court of New South Wales; delivered 20th March* 1896.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

This appeal arises out of an action by the insured against the insurers on a policy of fire insurance. The policy in question is dated 15th November 1893 and thereby the Respondents insured the Appellants against loss or damage by fire "on stock in trade of general store "keepers as follows viz., boots and shoes 100*l.* "fancy crockery and stationery 100*l.* drapery "and clothing 600*l.* ironmongery 100*l.* and "grocery 100*l.*—1,000*l.*" on their premises in Chanter Street, Berrigan in the Colony of New South Wales in the sum of 1,000*l.* subject to the conditions endorsed thereon. The 6th condition on which the present question arises was in the following words:—

"6. Statement and settlement of claims:—The insured "sustaining any loss or damage by fire shall forthwith give "notice to the company in Dunedin, or to the recognised agent "thereof, at or near the locality in which such loss or damage "shall occur, and shall within fifteen days after such fire, "deliver to the same an account in detail of such loss or

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" damage as the nature and circumstances of the case will " admit; and shall verify the same by solemn declaration " or affirmation before a magistrate, and shall produce books, " vouchers, and such other information and evidence as the " directors or agents of the company may reasonably require; " and unless such account, verified as aforesaid, shall be " delivered within the time aforesaid, and such other infor- " mation and evidence, if required, shall be produced in " manner aforesaid, no part of such loss shall be payable. " No profit of any sort is to be included in the claim; and if " there appeared to be any fraud, overcharge, or imposition, " or any false declaration, or if the fire shall have happened " by the procurement, or wilful act, means or connivance of " the assured or claimants, no benefit shall be recoverable " under this policy. If the company elect, pursuant to " clause 7 hereof, to replace or reinstate any property, the " insured, at his own expense, shall produce and give to the " company all such plans, specifications, particulars, books, and " information (oral and documentary) as the company may " require."

It appears that the Appellants in March 1893 had made an assignment for the benefit of their creditors and on the 1st of July in that year they bought back from their trustees their then existing stock at the value of 1,557*l.* They afterwards and before the date of the fire made further purchases of stock to the amount (it was said) including duty and freight of 1860*l.* 9*s.* 10*d.* In the course of their business they made sales partly for cash (in which case the amount received but not the particulars of the goods sold were entered in their cash book) and partly on credit the particulars of which last mentioned sales appeared in their ledger.

The fire took place on the 10th of January 1894 when the whole stock of the Appellants with a trifling exception was destroyed. Some of their books including the cash book and customers ledger were in a safe and were saved from the fire. The stock book however and the stock sheets of the end of 1893 were destroyed.

On the 24th of January 1894 the Appellants in assumed compliance with the 6th Condition

forwarded to the Respondents a Statutory Declaration that by the fire they had sustained loss amounting to 2,250*l.* as per detailed statement marked B. This statement was in the following terms:—

Statement referred to.

Particulars of Items burnt.	Value at time of fire.	Present value.	Amount claimed.	Remarks.
	£		£	
Drapery aod clothing - -	1,600		600	
Boots - - - -	200		100	
Fancy goods crockery and stationery - - -	150		100	
Ironmongery - - -	150		100	
Grocery - - - -	150		100	
	£2,250		£1,000	

The Respondents declined to accept this statement as sufficient compliance with the 6th Condition or to recognise any liability in the matter. The present action was accordingly commenced by the Appellants on the 8th of May 1894. The Respondents (among other defences) by their 8th plea relied on the 6th Condition.

At the trial before Stephen J. it appeared from the evidence of the Appellant Hiddle that the goods in the store at the time of the fire were the goods they bought back plus the invoice goods purchased since minus the goods sold. There were in addition 40*l.* worth bought from one Paassvanti. The witness stated that the invoices of the goods purchased by them in Melbourne and Sydney were destroyed in the fire—that they had written to the vendors for copies of those invoices but did not get them until after 15 days from the fire. The Appellants put in evidence (amongst other documents) a detailed inventory and valuation of the stock

bought back by them from their trustees in July 1893 (Exhibit L) and estimates (Exhibit U) prepared by their accountant from the materials in their possession after the fire showing how the amount of the loss was arrived at.

At the close of the Plaintiff's case the learned Judge non-suited them on the authority of a case of *Carnofsky* v. *New Zealand Insurance* 14 N. S. W. R. 102 where a condition in precisely similar terms to the 6th Condition in the present case was in question. The non-suit was confirmed by the Supreme Court. The Chief Justice in his judgment referred to two earlier cases in that Court decided on similar conditions in 1862 and 1884 as well as to the more recent case of *Carnofsky* referred to by Stephen J. This appeal is from the order of the Supreme Court.

It was contended on behalf of the Appellants that they were only bound to give such an account as the nature and circumstances of the case would admit of or (in other words) the best account they could, and that whether they had done so was a question of fact which ought to have been submitted to the jury. Their Lordships however accept the rule laid down by Willes J. in the case of *Ryder* v. *Wombwell* L. R. 4 Ex. 38 and they think that the non-suit was proper although there may have been some evidence to go to the jury if the proof was such that the jury could not reasonably give a verdict for the Plaintiffs. In the present case their Lordships doubt whether the statement forwarded by the Appellants was an account at all within the meaning of the 6th Condition and they consider it proved by the evidence of the Plaintiffs themselves that at the time of forwarding their statement they had in their possession materials which enabled them to give a much fuller more detailed and better account

for the purpose of enabling the Insurance Company to test the reality and extent of the loss.

Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed. The Appellants must pay the costs of the appeal.