

varied by a subsequent parol agreement. But the Divisional Court (Shearman and Sankey, JJ.) held that he was wrong, and that the true principle is that where the agreement varying an agreement, which would be invalid if it were not in writing, is itself of such a character that it is bound to be in writing, then, unless it is in writing it cannot be relied on to vary or rescind the original contract, and must be disregarded. But here the subsequent parol agreement was not required by law to be in writing, and was therefore valid.

INSURANCE—CONSEQUENTIAL LOSS—ASSESSMENT OF LOSS BY
INSURED'S AUDITOR—ASSESSMENT BY AUDITOR—CONCLUS-
IVENESS OF ASSESSMENT.

Recher v. North British & M. Insce. Co. (1915) 3 K.B. 277. This was a case stated by arbitrators. The plaintiffs were insured by defendants against loss by fire, under a policy which provided that in the event of damage by fire to their property the defendants would pay an agreed percentage on the amount by which the turnover of the plaintiffs' business in each month should be less than the turnover for the corresponding month in the year preceding the fire. And the policy further provided that the amount of all losses covered thereby should be assessed by the insured's auditors. A fire having occurred, the auditors gave certificates stating the difference between the turnover for the months after the fire and the corresponding months in the year preceding the fire, and the percentage payable. An arbitration was held to determine the amount payable under the policy, and the auditors' certificates were put in as evidence. The question submitted to the Court was how far the certificates were conclusive. The Divisional Court (Lord Reading, C.J., and Ridley and Scrutton, JJ.) held that the certificates were conclusive as to the amount payable in respect thereof, except so far as it could be shewn that the auditor had misdirected himself in point of law, or had omitted to take into consideration some material fact; and that the auditor might be cross-examined on those points, and the insurance company might call direct evidence to shew that the auditor had omitted to take into consideration that the losses of turnover were wholly or in part due to other causes than the fire, but not to shew that the auditors' conclusions of fact were erroneous.