1866.

Davies v. Home Ins. Co.

Mr. *Strong*, Q. C., and Mr. *Blake*, Q. C., for the appellant.

Mr. *Gwynne*, Q. C., and Mr. *Galt*, Q. C., for the respondents.

A. WILSON, J.—This action is similar to the one which was pending between these parties in the Common Pleas; but which was only formally decided there in accordance with the prior judgment of the Queen's Bench in this case. I had independently of this case therefore, to give the matter a good deal of consideration, which is the reason I have now stated my views at more length than I should otherwise have done.

The facts before us are that *Linton* indorsed the notes which *McMillan* gave to *Claxton* for the goods, the subject of insurance sold by *Claxton* to *McMillan*.

Judgment.

These notes are not expressly stated to have been negociable, and if they were not in fact so, then *Linton* had no insurable interest because he was never liable: *Palmer* v. *Pratt* (*a*), *Clay* v. *Harrison*, (*b*).

They may perhaps be assumed to be negociable instruments, and a legal liability may be assumed against *Linton* to have arisen in respect of them, for it is stated he indorsed the notes and therefore that it was such an indorsation as is valid and onerary in law. No exception was taken in the Court below and I do not feel called upon to say more on the point.

Passing then over this, the facts further are that beside the indorsation by *Linton* it was agreed between *Claxton*, *McMillan*, and *Linton*, and it formed part of the consideration for the sale and assignment of the

(*a*) 2 Bing. 185.

(*b*) 10 B. & C. 99.