

THE WEST OF ENGLAND FIRE INSURANCE COMPANY, v. ISAACS.

[Court of Appeal—24TH AND 25TH NOVEMBER.]

Insurance (fire)—Contract of indemnity—Right of insurer to benefit of assured's contract—Payment by insurer with knowledge of contract—Omission by insurer to claim right of subrogation—Release by assured—Right of insurer to benefits assured might have received.

Appeal by the defendant from a judgment of Collins, J. The case is reported 65 Law J. Rep. Q. B. 653.

Their Lordships dismissed the appeal, being of opinion that the plaintiffs, having paid the money secured by the policy, were entitled to enforce all the remedies which the defendant had against third parties under then subsisting contracts relating to the subject matter of the insurance; and inasmuch as the defendant had, after such payment by the plaintiffs, released a third party from his liability to make good the loss, the plaintiffs were entitled to recover from the defendant the equivalent of the benefit which the third party might have received, similar to the contract with the third party to make good the loss, their release through the plaintiffs had no effect on the payment with knowledge of the contract, and had not at that time claimed their right of subrogation under it.

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ATKINSON v. MORRIS.

[Court of Appeal—1ST AND 2ND DECEMBER.]

Probate—Will—Revocation—Evidence—Duplicate—Declarations of testatrix—Admissibility

of evidence of declarations of testatrix, made after execution of her will, to prove execution in duplicate and destruction of one part with the intention to revoke the will—Costs.

Appeal from a decision of Barnes, J.

Ann Keble Atkinson made her will in 1878, and thereby, after appointing executors and bequeathing sundry legacies, left her residue to her nephew. The will was duly executed and attested. At the trial before Barnes, J., and a special jury there was evidence that the will was drawn by the nephew; that he then made a copy of it which was not executed; that both original and copy remained, except for a short period, in the possession of the testatrix until her death in 1895; and that the copy was not then to be found, but the will was discovered with the signature of the testatrix and the Christian name and description of one of the witnesses crossed through with a pen, and a note appended in the handwriting of the testatrix as follows: "Null and void, A. K. A., through injustice on the part of Mrs. Emma (Atkinson and family) from time to time." There was no evidence that the will had been executed in duplicate. The defendants admitted that the will was not revoked by the erasures, but they desired to adduce the evidence of persons to whom the testatrix, after the execution of her will, had made declarations to the effect that she had executed her will in duplicate, and had destroyed one part with the intention of revoking her will. The plaintiffs agreed that this, if proved, would amount to revoca-